DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS

May 2007

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

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PREFACE

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

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

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

A. FINANCIAL REQUIREMENTS

.01 Financial Reports

a. The recipient shall submit a "Financial Status Report" (SF-269) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final SF-269 shall be submitted within 90 days after the expiration date of the award.

b. The reports must be submitted to the Grants Officer in hard copy (no more than an original and two copies), or electronically when specified in the special award conditions.

.02 Award Payments

a. The advance method of payment shall be authorized unless otherwise specified in a special award condition. The Grants Officer determines the appropriate method of payment. Payments will be made through electronic funds transfers directly to the recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 and the Cash Management Improvement Act. The DoC Award Number must be included on all payment-related

correspondence, information, and forms.

b. When the "Request for Advance or Reimbursement" (SF-270) is used to request payment, the recipient shall submit the request no more frequently than monthly, and advances shall be approved for periods to cover only expenses anticipated over the next 30 days. When the SF-270 is used, the recipient must complete the SF-3881, "ACH Vendor Miscellaneous Payment Enrollment Form," and return it to the Grants Officer.

c. Unless otherwise provided for in the award terms, payments under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers, in accordance with the requirements of the Debt Collection Improvement Act of 1996. In order to receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP: (1) ASAP account number – the award number found on the cover sheet of the award; (2) Agency Location Code (ALC) – 13060001; and Region Code. Recipients enrolled in the ASAP system do not need to submit a "Request for Advance or Reimbursement" (SF-270), for payments relating to their award. Awards paid under the ASAP system will contain a special award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

d. Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case should advances exceed the amount of cash required for a 30-day period. Advanced funds not disbursed in a timely manner and any applicable interest must be promptly returned to DoC. If a recipient demonstrates an unwillingness or inability to establish procedures which will minimize the time elapsing between the transfer of funds and disbursement or if the recipient otherwise fails to continue to qualify for the advance method of payment, the Grants Officer may change the method of payment to reimbursement only.

.03 Federal and Non-Federal Sharing

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

costs are greater than the total approved budget, the Federal share shall not exceed the total Federal dollar amount authorized by the award.

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

.04 Budget Changes and Transfer of Funds Among Categories

a. Requests for budget changes to the approved estimated budget in accordance with the provision noted below must be submitted to the Grants Officer who shall make the final determination on such requests and notify the recipient in writing.

b. Transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is $100,000 or less. For awards in which the Federal share of the project exceeds $100,000, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceed 10 percent of the total Federal and non-Federal funds authorized by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same criteria apply to the cumulative amount of transfer of funds among programs, functions, and activities. Transfers will not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, this does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget.

c. The recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

.05 Indirect Costs

a. Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award. (The term "indirect cost" has been replaced with the term

"facilities and administrative costs" under OMB Circular A-21, "Cost Principles for Educational Institutions.")

b. Excess indirect costs may not be used to offset unallowable direct costs.

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

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

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

(b) Commercial Organizations

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

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

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

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

Office of Acquisition Management

U.S. Department of Commerce

14th Street and Constitution Avenue, N.W., Room-6054

Washington, DC 20230

3. The recipient can use the fixed rate proposed in the indirect cost plan until such time as the DoC provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carryforward provision used in calculating next year's rate. This calculation of actual indirect costs and the carryforward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each of the recipients' fiscal years.

d. When DoC is not the oversight or cognizant Federal agency, the recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

e. If the recipient fails to submit the required documentation to DoC within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DoC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

f. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DoC will reimburse the recipient shall be the lesser of:

(1) The line item amount for the Federal share of indirect costs contained in the approved budget of the award; or

(2) The Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

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

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

b. Unless otherwise authorized in 15 CFR § 14.25(e)(2) or a special award condition, any extension of the award period can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the expiration date.

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

.07 Tax Refunds

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

B. PROGRAMMATIC REQUIREMENTS

.01 Performance (Technical) Reports

a. The recipient shall submit performance (technical) reports in triplicate (one original and two copies) or electronically to the Federal Program Officer as specified in the special award conditions in the same frequency as the Financial Status Report (SF-269) unless otherwise authorized by the Grants Officer.

b. Unless otherwise specified in the award provisions, performance (technical) reports shall contain brief information as prescribed in the applicable uniform administrative requirements incorporated into the award.

.02 Unsatisfactory Performance

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

.03 Programmatic Changes

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

.04 Other Federal Awards with Similar Programmatic Activities

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

.05 Non-Compliance With Award Provisions

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

.06 Prohibition Against Assignment by the Recipient

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

.07 Disclaimer Provisions

a. The United States expressly disclaims any and all responsibility or liability to the recipient or third persons for the actions of the recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any subaward or subcontract under this award.

b. The acceptance of this award by the recipient does not in any way constitute an agency relationship between the United States and the recipient.

C. NON-DISCRIMINATION REQUIREMENTS

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

.01 Statutory Provisions

a. Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d et seq.) and DoC implementing regulations published at 15 CFR Part 8 which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

b. Title IX of the Education Amendments of 1972 (20 USC §§ 1681 et seq.) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

c. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794) and DoC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance;

d. The Age Discrimination Act of 1975, as amended (42 USC §§ 6101 et seq.) and DoC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

e. The Americans with Disabilities Act of 1990 (42 USC §§ 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

f. Any other applicable non-discrimination law(s).

.02 Other Provisions

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

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

.03 Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against

discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

D. AUDITS

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

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

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

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

b. In accordance with 15 CFR § 14.26 (c) and (d), for-profit hospitals, commercial, and other organizations not covered by the audit provisions of OMB Circular A-133 that expend $500,000 or more in a year in Federal awards, are required to have a program-specific audit performed at the conclusion of the project, but no less than once every five years. Some DoC programs have specific audit guidelines that will be incorporated into the award. If DoC does not have a program-specific audit guide available for the program, the auditor should follow Generally Accepted Government Auditing Standards and the requirements for a program-specific audit as described in OMB Circular A-133 § .235. A copy of the program-specific audit shall be submitted to the OIG at the following address with a copy of the transmittal letter to the Grants Officer:

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

.02 Audit Resolution Process

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

b. In accordance with the Federal Register notice dated January 27, 1989 (54 FR 4053), a recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. Unless the Inspector General determines otherwise, the recipient has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.

2. The recipient has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.

3. The DoC shall review the documentary evidence submitted by the recipient and shall notify the recipient of the results in an Audit Resolution Determination Letter. The recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the audit resolution determination.

4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

5. The DoC shall review the recipient's appeal and notify the recipient of the results in an Appeal Determination Letter. After the opportunity to appeal has expired or after the appeal determination has been rendered, DoC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DoC.

E. DEBTS

.01 Payment of Debts Owed the Federal Government

Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. In accordance with 15 CFR § 21.4, a debt will be considered delinquent if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date. Failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the imposition of late payment charges as noted below. In addition, failure to pay the debt or establish a repayment agreement by the due date, or if there is no due date, within 30 days of the billing date, will also result in the referral of the debt for collection action, including referral to the Treasury Offset Program, 31 C.F.R. § 285.5, and may result in DoC taking further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions." Funds for payment of a debt must not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.

.02 Late Payment Charges

a. An interest charge shall be assessed on the delinquent debt as established by the Debt Collection Act (31 U.S.C. 3701 et seq.), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. This rate is published in the Federal Register by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness.

b. A penalty charge shall be assessed on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent.

c. An administrative charge shall be assessed to cover processing and handling the amount due.

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

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

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

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

F. NAME CHECK

A name check review will be performed by the OIG on key individuals associated with non-profit and for-profit organizations, unless (1) proposed award amounts are $100,000 or less; (2) applicants have been recipients of financial assistance from the Department of Commerce for three or more consecutive years without any adverse programmatic or audit finding; or (3) applicants are units of a state or local government.

.01 Results of Name Check

DoC reserves the right to take any of the actions described in section F.02 if any of the following occurs as a result of the name check review:

a. A key individual fails to submit the required Form CD-346, "Applicant for Funding Assistance;"

b. A key individual made an incorrect statement or omitted a material fact on the Form CD-346; or

c. The name check reveals significant adverse findings that reflect on the business integrity or responsibility of the recipient and/or key individual.

.02 Action(s) Taken as a Result of Name Check Review

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

a. Consider suspension/termination of the award;

b. Require the removal of any key individual from association with the management of and/or implementation of the award; and/or

c. Make appropriate provisions or revisions with respect to the method of payment and/or financial reporting requirements.

G. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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

H. DRUG-FREE WORKPLACE

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

I. LOBBYING RESTRICTIONS

.01 Statutory Provisions

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

.02 Disclosure of Lobbying Activities

The recipient receiving in excess of $100,000 in Federal funding shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit the Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

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

.01 Code of Conduct for Recipients

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

.02 Applicability of Award Provisions to Subrecipients

a. The recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award, including applicable cost principles, administrative, and audit requirements.

b. A recipient is responsible for subrecipient monitoring, including the following:

   1. *Award Identification* - At the time of the award, identifying to the subrecipient the Federal award information (e.g., CFDA title and number, award name, name of Federal agency) and applicable compliance requirements.

   2. *During-the-Award Monitoring* - Monitoring the subrecipient's use of Federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

   3. *Subrecipient Audits* - Ensuring that subrecipients expending $500,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of OMB Circular A-133, and that the required audits are completed within 9 months of the end of the subrecipient's audit period. In addition, the recipient is required to issue a management decision on audit findings within 6 months after receipt of the subrecipient's audit report, and ensuring that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity shall take appropriate action using sanctions.

.03 Competition and Codes of Conduct for Subawards

a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage,

subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.

b. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

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

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

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under $25,000 not requiring the consent of a DoC official) are subject to 2 CFR Part 1326, Subpart C "Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than $100,000 of Federal funds at any tier are subject to 15 CFR Part 28, "New Restrictions on Lobbying."

Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying--Lower Tier Covered Transactions," completed without modification.

b. The recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the award is subject to Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)."

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

.05 Minority Owned Business Enterprise

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

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

.06 Subaward and/or Contract to a Federal Agency

a. The recipient, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DoC and/or other Federal department, agency or instrumentality, without the prior written approval of the Grants Officer.

b. Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify the recipient in writing of the final determination.

K. PROPERTY

.01 Standards

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

.02 Real Property

The recipient shall record liens or other appropriate notices of record to indicate that real property has been acquired or improved with Federal funds and that disposition conditions apply to the property. The Recipient shall not dispose of or encumber the property or any interest therein without approval of the Grants Officer.

L. ENVIRONMENTAL REQUIREMENTS

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

requiring the recipient to submit additional environmental compliance information sufficient to enable the DoC to make an assessment on any impacts that a project may have on the environment.

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

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

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

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

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

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

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

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

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

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

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

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

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

Restrictions are placed on Federal funding for actions within a Coastal Barrier System.

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

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

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

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

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

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

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

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

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

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

M. MISCELLANEOUS REQUIREMENTS

.01 Criminal and Prohibited Activities.

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

b. False statements (18 U.S.C. §§ 287 and 1001), provides that whoever makes or presents any false, fictitious, or fraudulent statements, representations, or claims against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.

c. False Claims Act (31 U.S.C. 3729 et seq.), provides that suits under this act can be brought by the government, or a person on behalf of the government, for false claims under Federal assistance programs.

d. Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.

.02 Foreign Travel

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

b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.

c. Use of foreign air carriers may also be used only if bilateral agreements permit such travel pursuant to 49 USC § 40118(b). DoC is not aware of any bilateral agreements which meet these requirements. Therefore, it is the responsibility of the recipient to provide the Grants Officer with a copy of the applicable bilateral agreement if use of a foreign carrier under a bilateral agreement is anticipated.

d. If a foreign air carrier is anticipated to be used for any part of foreign travel, the recipient must receive prior approval from the Grants Officer. When requesting such approval, the recipient must provide a justification in accordance with guidance provided by 41 CFR § 301-10.142, which requires the recipient to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel, name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the recipient not being

reimbursed for any transportation costs for which the recipient improperly used a foreign air carrier.

.03 American-Made Equipment and Products.

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

.04 Intellectual Property Rights

a. Inventions.

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

1. Ownership.

(a) Recipient. The recipient has the right to own any invention it makes (conceived or first actually reduced to practice) or made by its employees. The recipient may not assign its rights to a third party without the permission of DoC unless it is to a patent management organization (i.e., a university's Research Foundation.) The recipient's ownership rights are subject to the Government's nonexclusive paid-up license and other rights.

(b) Department. If the recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, DoC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the recipient. DoC owns any invention made solely by its employees but may license the recipient in accordance with the procedures in 37 CFR Part 404.

(c) Inventor/Employee. If neither the recipient nor the Department is interested in owning an invention by a recipient employee, the recipient, with the written concurrence of DoC, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 CFR § 401.9.

(d) Joint inventions. Inventions made jointly by a recipient and a DoC employee will be owned jointly by the recipient and DoC. However, DoC may transfer its rights to the recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the recipient is willing to patent and license the invention usually in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one recipient and DoC employee). The agreement will be prepared by DoC and may include other provisions, such as a royalty free license to the Government and certain other entities. 35 U.S.C. § 202(e) also authorizes the recipient to transfer its rights to the Government which can agree to share royalties similarly as described above.

2. Responsibilities—iEdison.

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

(a) Reporting. Within two months of when the inventor reports the invention to the recipient, the recipient will send the invention disclosure to the Grants Officer and the appropriate DoC program office.

(b) Electing. Within two years of reporting the invention to DoC, the recipient will notify DoC of its decision whether or not it wishes to own the invention.

(c) Filing. Within one year of notifying DoC that it wishes to own the invention, the recipient will file a patent application (either a provisional or non-provisional) and promptly send a copy of the application to the Grants Officer. Any foreign or international application must usually be filed within 10 months of the first filed application in the United States. The recipient will ensure that any U.S. application contains the required statement of Government support. The recipient will also promptly send the required confirmatory Government license to the Grants Officer and DoC shall record that license in the Patent and Trademark Office. If the recipient decides to discontinue the prosecution of any patent application or not pay a maintenance fee or defend a reexamination, it shall notify the Grants Officer of that fact in sufficient time (but not less than 30 days) for the Government to respond to any outstanding requirement or letter from a patent office. However, if the recipient is filing a continuing application, it needs only to notify the Grants Officer of this and provide a copy of the continuing application with the appropriate confirmatory license. Upon issuance of any application, the recipient will promptly provide a copy of the patent to the Grants Officer.

(d) The recipient should send any request for an extension of time to the Grants Officer in advance of the expiration of the time period.

b. Patent Notification Procedures.

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

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

c. Data, Databases, and Software.

The rights to any work produced or purchased under a DoC Federal financial assistance award are determined by 15 CFR § 24.34 and 15 CFR § 14.36 . Such

works may include data, databases or software. The recipient owns any work produced or purchased under a DoC Federal financial assistance award subject to DoC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.

d. Copyright.

The recipient may copyright any work produced under a DoC Federal financial assistance award subject to DoC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DoC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion, DoC may ask the recipient to transfer to DoC its copyright in a particular work when DoC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

.05 Increasing Seat Belt Use in the United States.

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

.06 Research Involving Human Subjects.

a. All proposed research involving human subjects must be conducted in accordance with 15 CFR Part 27, "Protection of Human Subjects." No research involving human subjects is permitted under this award unless expressly authorized by Special Award Condition, or otherwise in writing by the Grants Officer.

b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

c. DoC regulations, 15 CFR Part 27, require that recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate DoC officials. This documentation may include:

1. Documentation establishing approval of the project by an institutional review board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines, see 15 CFR § 27.103;

2. Documentation to support an exemption for the project under 15 CFR § 27.101(b);

3. Documentation to support deferral for an exemption or IRB review under 15 CFR § 27.118;

4. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.

d. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

.07 Federal Employee Expenses.

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

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

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

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

.09 Minority Serving Institutions (MSIs) Initiative.

Pursuant to EOs 12876, 12900, and 13021, DoC is strongly committed to broadening the participation of MSIs in its financial assistance programs. DoC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DoC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

.10 Research Misconduct

Scientific or research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. It does not include honest errors or differences of opinion. The recipient organization has the primary responsibility to investigate allegations and provide reports to the Federal Government. Funds expended on an activity that is determined to be invalid or unreliable because of scientific misconduct may result in a disallowance of costs for which the institution may be liable for repayment to the awarding agency. The Office of Science and Technology Policy at the White House published in the

Federal Register on December 6, 2000, a final policy that addressed research misconduct. The policy was developed by the National Science and Technology Council (65 FR 76260). The DoC requires that any allegation be submitted to the Grants Officer, who will also notify the OIG of such allegation. Generally, the recipient organization shall investigate the allegation and submit its findings to the Grants Officer. The DoC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the DoC's final determination.

.11 Publications, Videos and Acknowledgment of Sponsorship

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

.12 Care and Use of Live Vertebrate Animals

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Public Law 89-544), as amended, (7 U.S.C. §§ 2131 et seq.) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations, 9 CFR Parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. §§ 1531 et seq.); Marine Mammal Protection Act (16 U.S.C. §§ 1361 et seq.) (taking possession, transport, purchase, sale, export or import of wildlife and plants); The Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 et seq.) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities

supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DoC financial assistance award unless authorized by the Grants Officer.

.13 **Homeland Security Presidential Directive – 12**

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

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

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

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

(c) Definitions

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

(2) Export-controlled information and technology. Export-controlled information and technology subject to the EAR (15 CFR §§ 730-774), implemented by the DOC

Bureau of Industry and Security, or the International Traffic In Arms Regulations (ITAR) (22 CFR §§ 120-130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-use items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.

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

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

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