

**Headquarters
Policy Flash**

FLASH 2000-07

DATE: April 5, 2000
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, MA-51
Office of Procurement and Assistance Management

SUBJECT: **Interim Final Rule**

SUMMARY: This Flash transmits: (1) a copy of a common Interim Final Rule which amends the Department of Energy's Financial Assistance Regulations; and (2) a copy of the revised section 600.136. **The Rule is effective April 17, 2000 for new awards.**

FLASH 2000-07

A. Amendment

On March 16, 2000, DOE and 14 other federal agencies amended their Financial Assistance regulations to reflect OMB's recent revision to Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom on Information Act.

B. Summary of Amendment

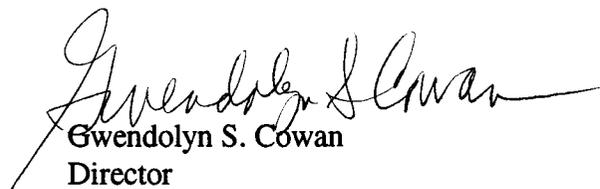
This rule amends Section 600.136, Intangible Property to reflect OMB's recent revision to Circular 1-110, Section _____.36.

Before Circular A-110 was amended, obligations under the Freedom of Information (FOIA) applied only to information that was in the custody of the Government. DOE did not ask a recipient to provide data produced under an award solely for the purpose of responding to an FOIA request. In the future, DOE must request and recipients must provide any published research data that was used by the Federal Government in developing an agency action that has the force and effect of law so that the data can be made available to the public through the FOIA procedures.

If you have any questions related to this issue, please contact Trudy Wood at (202) 586-5625.

2 Attachments:

Federal Register/ Vol. 65, No. 52, March 16, 2000
Amended Section 600.136



Gwendolyn S. Cowan
Director

cc: PPAG Members



Federal Register

Thursday,
March, 16, 2000

Part IV

**Department of Agriculture
Department of Energy
National Aeronautics and
Space Administration
Department of Commerce
Department of State
Agency for International
Development
Department of Justice
Department of Labor
Department of Defense
Department of Education
National Archives and
Records Administration
Environmental Protection
Agency
Department of the Interior
Department of Health and
Human Services
Department of
Transportation**

**Uniform Administrative Requirements for
Grants and Agreements With Institutions
of Higher Education, Hospitals, and Other
Non-Profit Organizations; Final Rule**

DEPARTMENT OF AGRICULTURE

7 CFR Part 3019

DEPARTMENT OF ENERGY

10 CFR Part 600

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

DEPARTMENT OF COMMERCE

15 CFR Part 14

DEPARTMENT OF STATE

22 CFR Part 145

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

DEPARTMENT OF JUSTICE

28 CFR Part 70

DEPARTMENT OF LABOR

29 CFR Part 95

DEPARTMENT OF DEFENSE

32 CFR Parts 22 and 32

DEPARTMENT OF EDUCATION

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1210

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

DEPARTMENT OF THE INTERIOR

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

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DEPARTMENT OF TRANSPORTATION

49 CFR Part 19

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCIES: Department of Agriculture, Department of Energy, National Aeronautics and Space Administration, Department of Commerce, Department of State, Agency for International Development, Department of Justice, Department of Labor, Department of Defense, Department of Education, National Archives and Records Administration, Environmental Protection Agency, Department of the Interior, Department of Health and Human Services, Department of Transportation.

ACTION: Interim final rule with request for comments.

SUMMARY: This document presents an interim final revision to the agencies' codification of Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." OMB issued a final revision to Circular A-110 on September 30, 1999, as required by Public Law 105-277. It was published in the **Federal Register** on October 8, 1999. The agencies' interim final rules will provide uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations.

DATES: This interim final rule is effective April 17, 2000. Comments must be received on or before May 15, 2000.

ADDRESSES: Comments on the interim final rule should be addressed to: Charles Gale, Director, Office of Grants Management, Department of Health and Human Services, Room 517-D, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201. A copy of each communication submitted will be available for public inspection and copying during regular business hours (9:00 a.m.-5:30 p.m. eastern standard time) at the above address. The full text of Circular A-110, the text of the September 30th notice of final revision, and a chart showing where each agency has codified the Circular into regulation may be obtained by accessing OMB's home page (<http://www.whitehouse.gov/omb>), under the heading "Grants Management."

FOR FURTHER INFORMATION CONTACT: For general issues regarding this interim

final rule, please contact Charles Gale, Director, Office of Grants Management, Department of Health and Human Services at (202) 690-6377. For agency-specific issues, please contact the individual noted in that agency's adoption below.

SUPPLEMENTARY INFORMATION:**Background**

Congress included a two-sentence provision in OMB's appropriation for fiscal year 1999, contained in Public Law 105-277, directing OMB to amend Section .36 of Circular A-110 "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." The provision also provides for a reasonable fee to cover the costs incurred in responding to a request. Circular A-110 applies to grants and cooperative agreements to institutions of higher education, hospitals, and non-profit institutions, from all Federal agencies.

In directing OMB to revise Circular A-110, Congress entrusted OMB with the authority to resolve statutory ambiguities, the obligation to address implementation issues the statute did not address, and the discretion to balance the need for public access to research data with protections of the research process. In developing the revision, OMB sought to implement the statutory language fairly, in the context of its legislative history. This required a balanced approach that (1) furthered the interest of the public in obtaining the information needed to validate Federally-funded research findings, (2) ensured that research can continue to be conducted in accordance with the traditional scientific process, and (3) implemented a public access process that will be workable in practice.

OMB finalized the revision on September 30, 1999 (64 FR 54926, October 8, 1999). Before this, OMB published a Notice of Proposed Revision on February 4, 1999 (64 FR 5684), and a request for comments on clarifying changes to the proposed revision on August 11, 1999 (64 FR 43786). OMB received over 9,000 comments on the proposed revision and over 3,000 comments on the clarifying changes.

This interim final rule amends the agencies' codifications of Circular A-110 so they reflect OMB's recent action.

Under the provisions of section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)), any Department of Housing and Urban Development (HUD) proposed or interim final rule that is issued for

public comment is subject to prepublication Congressional review for a period of 15 days. Therefore, HUD is not joining in today's publication but is adopting the common amendments in a separate rulemaking.

Impact Analysis

Executive Order 12866

This is a significant regulatory action under Section 3(f)(4) of Executive Order 12866, "Regulatory Planning and Review."

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

The participating agencies certify that this interim final rule will not have a significant impact on a substantial number of small entities. This rule concerns the information that Federally-funded researchers must provide in response to Freedom of Information Act requests.

Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (Public Law 104-4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of \$100 million by State, local, Indian Tribal governments or the private sector. Since this interim final rule will not result in expenditures of this magnitude, the participating agencies certify that such statements are not necessary.

Paperwork Reduction Act

The participating agencies certify that this interim final rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) agencies generally offer interested parties the opportunity to comment on proposed regulations before they become effective. However, in this case OMB previously provided the public an opportunity to comment on the revision of Circular A-110, and this regulatory action codifies that revision. Accordingly, while the participating agencies are requesting public comment on this regulatory action, they find that soliciting further

public comment with respect to adopting the revised circular, prior to the adoption becoming effective, is unnecessary and contrary to public interest under 5 U.S.C. 553(b)(B). The regulatory action is therefore being issued as an interim final rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the participating agencies have determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Text of the Interim Final Rule

The text of the interim final rule appears below:

PART/SUBPART—[AMENDED]

1. Section .36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ .36 Intangible property.

* * * * *

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding

agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

* * * * *

Adoption of Interim Final Rule

The adoption of the interim final rule by the participating agencies, as modified by agency-specific text is set forth below:

DEPARTMENT OF AGRICULTURE**7 CFR Part 3019**

FOR FURTHER INFORMATION CONTACT:
Gerald Miske, Fiscal Policy Division,
Office of the Chief Financial Officer,
202-720-1553.

ADDITIONAL SUPPLEMENTARY INFORMATION:
The Department of Agriculture (USDA) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section—.36 regarding the availability of data produced under an award through the Freedom of Information Act into USDA's grants administration regulation at 7 CFR Part 3019. Consistent with this Circular, this rule applies to USDA awards made to institutions of higher education, hospitals, and other non-profit organizations. It also applies to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, and other non-profit organizations.

List of Subjects in 7 CFR Part 3019

Accounting, Colleges and universities, Grant programs—agriculture, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 20, 2000.

Sally Thompson,

Chief Financial Officer.

Dated: January 21, 2000.

Dan Glickman,

Secretary of Agriculture.

For reasons stated in the preamble, the Department of Agriculture amends 7 CFR part 3019 as follows:

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

1. The authority citation for part 3019 continues to read as follows:

Authority: 5 U.S.C. 301.

§ 3019.36 [Amended]

2. Section 3019.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

DEPARTMENT OF ENERGY**10 CFR Part 600**

FOR FURTHER INFORMATION CONTACT:
Trudy Wood, Office of Procurement and Assistance Policy (MA-51), U.S.

Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, telephone 202-586-5625.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The Department of Energy (DOE) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act into DOE's assistance regulations at 10 CFR Part 600. Consistent with this Circular and 10 CFR Part 600, this rule applies to DOE awards made to institutions of higher education, hospitals, other non-profit organizations and commercial organizations. The OMB notices in the **Federal Register** soliciting comments on this subject did not address the potential applicability of the revisions to OMB Circular A-110 to commercial organizations. Since the application of OMB Circular A-110 to commercial organizations is optional, 10 CFR 600.136(d) will not apply to commercial organizations.

List of Subjects in 10 CFR Part 600

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

Dated: January 21, 2000.

Edward R. Simpson,

Acting Director, Office of Procurement and Assistance Management.

For the reasons stated in the preamble, the Department of Energy amends 10 CFR part 600 as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7254, 7256, 13525; 31 U.S.C. 6301-6308, unless otherwise noted.

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit Organizations and Commercial Organizations

§ 600.136 [Amended]

2. Section 600.136 (.36) is amended as follows:

- a. Paragraph (b) is removed.
- b. Paragraph (a)(2) is redesignated as new paragraph (b) and revised.
- c. Paragraph (a)(3) is redesignated as paragraph (c) and revised as set forth at the end of the common preamble.

d. Newly redesignated paragraph (c) is further amended by removing the phrase "The Federal Government" in the introductory text and adding "DOE" in its place.

e. Paragraph (a)(4) is redesignated as paragraph (e) and the first sentence is revised.

f. Paragraph (a) is revised.

g. Paragraph (d) is added as set forth in the common preamble.

h. New paragraph (d) is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "DOE" in its place and by adding paragraph (d)(3).

The revisions and addition read as follows:

§ 600.136 Intangible property.

(a) Recipients that are institutions of higher education, hospitals, and other non-profit organizations may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes and to authorize others to do so.

(b) In addition to this section, recipients must follow the requirements set forth at 10 CFR 600.27.

* * * * *

(d) * * *

(3) This paragraph (d) applies only to recipients that are institutions of higher education, hospitals, and other non-profit organizations.

(e) For recipients that are institutions of higher education, hospitals, and other non-profit organizations, title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. * * *

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

FOR FURTHER INFORMATION CONTACT:
Diane Thompson, Manager, Sponsored Research Business Activity, Code HC, NASA Headquarters, Washington, DC, (202) 358-0514, e-mail: diane.thompson@hq.nasa.gov.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The National Aeronautics and Space Administration (NASA) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section—.36 regarding the availability of data produced under an award through the Freedom of Information Act into NASA's grants

administration regulation at 14 CFR Part 1260. Consistent with this Circular, this rule applies to NASA awards made to institutions of higher education, hospitals and other non-profit organizations.

List of Subjects in 14 CFR 1260

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Recordkeeping and reporting requirements.

Anne Guenther,
Acting Associate Administrator for Procurement.

For the reasons stated in the preamble, the National Aeronautics and Space Administration amends 14 CFR Part 1260 as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for part 1260 is revised to read as follows:

Authority: 42 U.S.C. 2473(c)(1); Pub. L. 97-258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*); and OMB Circular A-110 (64 FR 54926, October 8, 1999).

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

§ 1260.136 [Amended]

2. Section 1260.136 (—.36) is amended as follows:

- a. Paragraph (c) is revised as set forth at the end of the common preamble.
- b. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f).
- c. Paragraph (d) is added as set forth at the end of the common preamble.
- d. New paragraph (d) is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "NASA" in its place.

DEPARTMENT OF COMMERCE

15 CFR Part 14

FOR FURTHER INFORMATION CONTACT: Susan L. Sutherland, Director, Office of Executive Assistance Management, Telephone Number 202-482-4115.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Commerce (DoC) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act into DoC's grants administration regulation at 15

CFR Part 14. Consistent with this Circular, this rule applies to DoC awards made to institutions of higher education, hospitals, other non-profit, and commercial organizations. It also applies to such entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under DoC awards.

List of Subjects in 15 CFR Part 14

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

Susan L. Sutherland,
Director, Office of Executive Assistance Management.

For the reasons stated in the preamble, the Department of Commerce amends 15 CFR part 14 as follows:

PART 14—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NON-PROFIT, AND COMMERCIAL ORGANIZATIONS

1. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A-110 (64 FR 54926, October 8, 1999).

§ 14.36 [Amended]

2. Section 14.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.
3. Section 14.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "DoC" in its place.

DEPARTMENT OF STATE

22 CFR Part 145

FOR FURTHER INFORMATION CONTACT: Georgia Hubert, Director, Federal Assistance Program, Office of the Procurement Executive, U.S. Department of State, Washington, DC 20520, (703) 812-2526.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State (DOS) is publishing this interim final rule to incorporate the provisions of OMB Circular A-110, Section —.36, regarding the availability through the Freedom of Information Act of data produced under an award, into the DOS grants uniform administrative requirements at 22 CFR Part 145. Consistent with this Circular, this rule applies to DOS awards made to

institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, local and Indian Tribal governments administering programs under DOS awards. The OMB notices in the **Federal Register** soliciting comments on this subject did not address the potential applicability of the revisions to OMB Circular A-110 to commercial organizations. Since the application of OMB Circular A-110 to commercial organizations is optional, 22 CFR section 145.36(d)(1) will not apply to commercial organizations.

List of Subjects in 22 CFR Part 145

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

Dated: January 13, 2000.

Lloyd W. Pratsch,
Procurement Executive.

For the reasons stated in the preamble, the Department of State amends 22 CFR part 145 as follows:

PART 145—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

1. The authority citation for part 145 is revised to read as follows:

Authority: 22 U.S.C. 2658.1; OMB Circular A-110 (64 FR 54926, October 8, 1999).

2. Section 145.1 is amended by revising the first sentence to read as follows:

§ 145.1 Purpose.

This regulation establishes uniform administrative requirements for Department of State grants and cooperative agreements awarded to institutions of higher-education, hospitals, other nonprofit organizations, and commercial organizations, except that § 145.36(d)(1) shall not apply to commercial organizations. * * *

§ 145.36 [Amended]

3. Section 145.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

4. Section 145.36 is further amended by adding paragraph (d)(3) to read as follows:

§ 145.36 Intangible property.

* * * * *
(d) * * *

(3) The requirements set forth in paragraph (d)(1) of this section do not apply to commercial organizations.

* * * * *

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

FOR FURTHER INFORMATION CONTACT: M/OP/P, Diana Esposito, Procurement Analyst, U.S. Agency for International Development, Room 7.08-105, M/OP/P, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20523-7801, Telephone (202) 712-4163, FAX (202) 216-3395.

List of Subjects in 22 CFR Part 226

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

For the reasons stated in the preamble, the Agency for International Development amends 22 CFR part 226 as follows:

PART 226—ADMINISTRATION OF ASSISTANCE AWARDS TO U.S. NON-GOVERNMENTAL ORGANIZATIONS

1. The authority citation for part 226 continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

§ 226.36 [Amended]

2. Section 226.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

Dated: January 27, 2000.

Rodney W. Johnson,
Director, Office of Procurement.

DEPARTMENT OF JUSTICE

28 CFR Part 70

[A.G. Order No. 2289-2000]

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer, Comptroller & Chief Financial Officer, Office of Justice Programs, U. S. Department of Justice, (202) 307-0623.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice (Department) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section—.36 regarding the availability of data produced under an award through the Freedom of Information Act into the Department's grants administration

regulation at 28 CFR Part 70. Consistent with this Circular, this rule applies to awards made by the Department to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under Departmental awards.

List of Subjects in 28 CFR Part 70

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

Dated: February 24, 2000.

Janet Reno,
Attorney General.

For the reasons stated in the preamble, the Department of Justice amends 28 CFR part 70 as follows:

PART 70—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS (INCLUDING SUBAWARDS) WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 70 is revised to read as follows:

Authority: 5 U.S.C. 301; the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042, 4351-4353; OMB Circular A-110 (64 FR 54926, October 8, 1999).

§ 70.36 [Amended]

2. Section 70.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

3. Section 70.36 is further amended by removing the phrase "Federal Government" in paragraph (c) introductory text and adding "Department" in its place.

4. Section 70.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "Departmental awarding agency" in its place.

DEPARTMENT OF LABOR

29 CFR Part 95

FOR FURTHER INFORMATION CONTACT: Comments specific to the Department of Labor may be directed to Phyllis R.

McMeekin, Office of the Acquisition Advocate, 202-219-9174, [fax 202-219-9440]. Mailing address: U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5425, Washington, DC 20210.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability through the Freedom of Information Act of data produced under an award into DOL's grants administration regulation at 29 CFR Part 95. Consistent with this Circular, this rule applies to DOL awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards as indicated in Subpart 95.5. The OMB notices in the **Federal Register** soliciting comments on this subject did not address the potential applicability of the revisions to OMB Circular A-110 to commercial organizations. Since the application of OMB Circular A-110 to commercial organizations is optional, 29 CFR § 95.36(d)(1) will not apply to commercial organizations.

List of Subjects in 29 CFR Part 95

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

Dated: January 27, 2000.

Alexis M. Herman,
Secretary of Labor.

For the reasons stated in the preamble, the Department of Labor amends 29 CFR part 95 as follows:

PART 95—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS, AND WITH COMMERCIAL ORGANIZATIONS, FOREIGN GOVERNMENTS, ORGANIZATIONS UNDER THE JURISDICTION OF FOREIGN GOVERNMENTS, AND INTERNATIONAL ORGANIZATIONS

1. The authority citation for part 95 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A-110 (64 FR 54926, October 8, 1999); Secretary of Labor's Order 4-76.

§ 95.36 [Amended]

2. Section 95.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

3. Section 95.36 is further amended by removing the phrase "The Federal Government" in paragraph (c) introductory text, and adding "DOL" in its place.

4. Section 95.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears, and adding "DOL" in its place.

DEPARTMENT OF DEFENSE

32 CFR Parts 22 and 32

FOR FURTHER INFORMATION CONTACT: Mark Herbst, Office of the Deputy Under Secretary of Defense (Science and Technology), 3080 Defense Pentagon, Washington, D.C. 20301-3080.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Defense (DoD) adopts two interim final amendments to the DoD Grant and Agreement Regulations (DoDGARs). These amendments apply to awards made on or after the effective date of this regulatory change.

The principal amendment is to section 32.36 of Part 32 of the DoDGARs, which is the DoD's

implementation of OMB Circular A-110. In adopting this amendment, the Office of the Secretary of Defense, the Military Departments and the Defense Agencies will maintain uniform policies on access to data produced under awards to universities and nonprofit organizations that are consistent with the policies of other Executive Departments and Agencies.

The other amendment is to Appendix C of Part 22 of the DoDGARs, to conform that appendix to the revised section 32.36 of Part 32. The change is to delete language advising DoD grants officers that an issue to be addressed in award terms and conditions is whether to waive the Government's access rights to data produced under awards. With the revision to section 32.36 of part 32, that no longer is an option. Two other technical corrections are made to the appendix, to correct citations to sections of the DoDGARs.

List of Subjects

32 CFR Part 22

Accounting, Grant programs—education, Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of Defense amends Subchapter B of Chapter I of Title 32 of the Code of Federal Regulations as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

2. Appendix C to Part 22 is revised to read as follows:

BILLING CODE 3410-KS, 6450-01, 7510-01, 3510-FA, 4710-05, 6116-01, 4410-18, 4510-23, 5001-10, 4000-01, 7515-01, 6560-50, 4310-RF, 4150-24, 4910-62-P

Appendix C to Part 22—Administrative Requirements and Issues to be Addressed in Award Terms and Conditions

| REQUIREMENT, IN BRIEF | SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND) | | | ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS |
|--|--|--------------------------------|-------------------|---|
| | University or other nonprofit | Governmental entity | For-profit entity | |
| Standards for Financial Management Systems. Recipients' systems to comply with: Payment. Recipients request payments and handle advances and interest in compliance with: | 32 CFR 32.21 | 32 CFR 33.20 | 32 CFR 34.11 | For university, nonprofit, or for-profit entity, specify if want: <ul style="list-style-type: none"> Bonding and insurance [32 CFR 32.21(c) or 32 CFR 34.11(b)]. Fidelity bond [32 CFR 32.21(d) or 32 CFR 34.11(c)]. Specify: <ul style="list-style-type: none"> Payment method (e.g., advance, reimbursement, working capital advance). NOTE: if predetermined payment schedule is used, must specify means to ensure that recipients don't develop large cash balances well in advance of needs for such funds (e.g., recipient submits SF-269 or SF-270 forms at regular intervals, for grants officer to review recipients' cash on hand). Name/address of office to which recipient sends payment requests. How frequently recipient may submit payment requests. Whether recipient requests payment by SF-270, SF-271, or other form, or by electronic means (e.g., electronic data interchange). Name/address of office that will make payments, and whether the recipient is to receive payments by electronic funds transfer (see §22.605(c) and §22.810(b)(2)). Name/address of office to which recipient is to remit any interest earned, if advance payment method is to be used. If interest is to be remitted using electronic commerce, information should be provided on required format and data elements. |
| | 32 CFR 32.22 | 32 CFR 33.21, 33.41(d) and (e) | 32 CFR 34.12 | |
| Allowable costs. Allowability of costs to be in accordance with: | 32 CFR 32.27 and 32.28 | 32 CFR 33.22 and 33.23 | 32 CFR 34.17 | |
| Fee/profit. None allowed. | | | 32 CFR 34.18 | |
| Cost share or match. If cost share or match is required, allowability and valuation are governed by: | 32 CFR 32.23 | 32 CFR 33.24 | 32 CFR 34.13 | Specify if want to allow inclusion of certain types of items as cost share or allow them to be valued in certain ways [32 CFR 32.23(b)(c) and (g); 32 CFR 33.24(b)(4), (b)(5), and (e)(2); 32 CFR 34.13(a)(7), (b)(1), and (b)(4)(ii)]. |

| REQUIREMENT, IN BRIEF | SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND) | | | ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS |
|---|--|---------------------|----------------------------|---|
| | University or other nonprofit | Governmental entity | For-profit entity | |
| <p><u>Program income.</u> Recipients account for program income in accordance with:</p> | 32 CFR 32.24 | 32 CFR 33.25 | 32 CFR 34.14 | <p>Specify:</p> <ul style="list-style-type: none"> • Method for disposition [32 CFR 32.24(b), (c), and (d); 32 CFR 33.25(g); 32 CFR 34.14(d), (e), and (f)]. • If want recipient to have obligation to Government for certain types of income or for income earned after end of project period [32 CFR 32.24(e) and (h), 32 CFR 33.25(a), (d), (e), and (h), 32 CFR 34.14(b)]. • If want to allow recipient to deduct costs of generating income [32 CFR 32.24(f), 32 CFR 33.25(c), 32 CFR 34.14(c)]. |
| <p><u>Revision of budget/program plans.</u> Recipients request prior approval for plan changes, in accordance with:</p> | 32 CFR 32.25 | 32 CFR 33.30 | 32 CFR 34.15 | <p>Specify if wish to:</p> <ul style="list-style-type: none"> • Waive some prior approvals that are optional, but are in effect unless specifically waived [32 CFR 33.30(b), (c)(1), (d)(3); 32 CFR 34.15(c)(2)]. • Require some prior approvals that are optional, but are only in effect if specifically stated [32 CFR 32.25(c)(5), (d), (e), (h); 32 CFR 34.15(c)(3)]. • Waive the requirement for prior approval [32 CFR 25.25(d)(3)] for recipient to initiate one-time, no-cost extension, as long as the DoD Component judges that the recipient's doing so would not cause the DoD Component to fail to comply with DoD funding policies (e.g., the incremental programming and budgeting policy for research funding) contained in Volume 2A of the DoD Financial Management Regulation (DoD 7000.14-R). |
| <p><u>Audit.</u> Recipients periodically to have independent, financial and compliance audit and report to DoD, subject to provisions of:</p> | 32 CFR 32.26 | 32 CFR 33.26 | 32 CFR 34.16 | <p>Require all but for-profit entities to submit copy of OMB Circular A-133 audit reports to IG, DoD. Require for-profit entities to submit audit reports to whichever office(s) the DoD Component wishes audit reports to be sent.</p> |
| <p><u>Procurement.</u> Recipients' systems for acquiring goods and services under awards are to comply with:</p> | 32 CFR 32.40 through 32.49 | 32 CFR 33.36 | 32 CFR 34.30 through 34.31 | <p>Specify if want to require recipient to make certain preaward documents available for DoD Component's review [32 CFR 32.44(e); 32 CFR 33.36(g); 32 CFR 34.31(b)].</p> |

| REQUIREMENT, IN BRIEF | SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND) | | | ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS |
|--|--|----------------------------|----------------------------|--|
| | University or other nonprofit | Governmental entity | For-profit entity | |
| Subawards. Recipients flow down requirements to subawards in accordance with: Property. Recipients manage in accordance with: | 32 CFR 32.5, 32 CFR 33.37, and 32 CFR 34.1(b)(2) | | | Specify if want: <ul style="list-style-type: none"> To allow for-profit entities to acquire real property under awards [32 CFR 34.21(a)]. University or other nonprofit to have any further obligation to Government for exempt property [32 CFR 32.33(b)]. To retain right to transfer title [32 CFR 32.34(h), 32 CFR 33.32(g)]. To allow recipients to use equipment for certain purposes [32 CFR 32.34(d) and (e), 32 CFR 33.32(c)(4), 32 CFR 34.21(d)]. To waive data rights [32 CFR 34.25(b)(2)]. To require recipients to record liens [32 CFR 32.37]. For research awards to certain recipients, include patents clause required by 37 CFR 401 [32 CFR 32.36(b), 32 CFR 34.25(a)]. Specify: <ul style="list-style-type: none"> When recipients are to submit periodic and final performance reports [32 CFR 32.51(b) and (c), 32 CFR 33.40(b), (c), and (f); 32 CFR 34.41]. Frequency of financial status/cash transaction reports [32 CFR 32.52(a)(1)(iii) and (a)(2)(iv); 32 CFR 33.41(b)(3) and (c); 32 CFR 34.41], or if wish to waive them under certain conditions [32 CFR 32.52(a)(1)(i) and (a)(2)(v); 32 CFR 33.41(a)(6); 32 CFR 34.41]. Whether want reports on cash or accrual basis [32 CFR 32.52(a)(1)(ii), 32 CFR 33.41(b)(2), 32 CFR 34.41]. |
| | 32 CFR 32.30 through 32.37 | 32 CFR 33.31 through 33.34 | 32 CFR 34.20 through 34.25 | |
| Reports. Requirements are specified in: | 32 CFR 32.51 and 32.52 | 32 CFR 33.40 and 33.41 | 32 CFR 34.41 | |
| Records. Retention and access requirements specified in: | 32 CFR 32.53 | 32 CFR 33.42 | 32 CFR 34.42 | |

| REQUIREMENT, IN BRIEF | SOURCE OF REQUIREMENT, FOR EACH TYPE OF RECIPIENT (WHERE DETAILS MAY BE FOUND) | | | ISSUES TO BE ADDRESSED IN AWARD TERMS/CONDITIONS |
|---|--|----------------------------|----------------------------|--|
| | University or other nonprofit | Governmental entity | For-profit entity | |
| Termination and enforcement. Award is subject to: | 32 CFR 32.61 and 32.62 | 32 CFR 33.43 and 33.44 | 32 CFR 34.51 and 34.52 | |
| Disputes, claims, and appeals. Procedures are specified in: | | 32 CFR 22.815 | | <ul style="list-style-type: none"> • Include term or condition that incorporates procedures, in accordance with 32 CFR 22.815(a). |
| After-the-award requirements. Closeout, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to requirements in: | 32 CFR 32.71 through 32.73 | 32 CFR 33.50 through 33.52 | 32 CFR 34.61 through 34.63 | |

BILLING CODE 3410-KS, 6450-01, 7510-01, 3510-FA, 4710-05, 6116-01, 4410-18, 4510-23, 5001-10, 4000-01, 7515-01, 6560-50, 4310-RF, 4150-24, 4910-82

PART 32—[AMENDED]

3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 32.36 [Amended]

4. Section 32.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

5. Section 32.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears, and adding "DoD Component that made the award" in its place.

Dated: January 25, 2000.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

DEPARTMENT OF EDUCATION

34 CFR Part 74

FOR FURTHER INFORMATION CONTACT: Arthur Stewart. Telephone: (202) 708-9049. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1-800-877-8339. Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Education (ED) publishes this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under a grant award through the Freedom of Information Act into ED's grants administration regulations at 34 CFR Part 74. Consistent with the Circular, this rule applies to ED grant awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to those entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under ED awards.

Invitation to Comment: In addition to any comments submitted to Charles Gale at the U.S. Department of Health and Human Services, we invite you to submit comments regarding ED's specific implementation of these interim final regulations to Arthur Stewart, Department of Education, room 3652,

ROB-3, Seventh and D Streets, SW., Washington, DC 20202-4248.

During and after the comment period, you may inspect public comments submitted to ED about its specific interim final regulations in room 3652, ROB-3, Seventh and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these interim final regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

Assessment of Educational Impact: Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to this Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: <http://ocfo.ed.gov.fedreg.htm>, and <http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

List of Subjects in 34 CFR Part 74

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

Dated: January 24, 2000.

Richard W. Riley,
Secretary of Education.

For the reasons stated in the preamble, the Secretary of Education amends 34 CFR part 74 as follows:

PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 74 continues to read as follows:

Authority: 20 U.S.C. 1221e-3, 3474; OMB Circular A-110, unless otherwise noted.

§ 74.36 [Amended]

2. Section 74.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

3. Section 74.36 is further amended by removing the phrase "the Federal awarding agency" in paragraph (d)(1) each time it appears and adding "ED" in its place.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1210

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301-713-7360, extension 226 or by fax at 301-713-7270.

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) is the grant-making component of the National Archives and Records Administration (NARA). The NHPRC makes grants to state and local archives, colleges and universities, libraries, historical societies, and other nonprofit organizations in the U.S. to help identify, preserve, and provide public access to records, photographs, and other materials that document American history. We are publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act into our NHPRC grants administration regulation at 36 CFR Part 1210.

List of Subjects in 36 CFR Part 1210

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

Dated: January 11, 2000.

John W. Carlin,

Archivist of the United States.

For the reasons stated in the preamble, the National Archives and Records Administration amends 36 CFR part 1210 as follows:

PART 1210—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for part 1210 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A-110 (64 FR 54926, October 8, 1999).

§ 1210.36 [Amended]

2. Section 1210.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding new paragraph (d) as set forth at the end of the common preamble.

3. Section 1210.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "NHPRC" in its place.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

FOR FURTHER INFORMATION CONTACT:

Alexandria Mincey, Grants Administration Division, Policy, Information and Training Branch, 1300 Pennsylvania Avenue, NW (3903R), Fifth Floor, Room 51288, Washington, DC 20004, (202) 564-5371.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The Environmental Protection Agency (EPA) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act into EPA's grants administration regulation at 40 CFR Part 30. Consistent with this Circular, this rule applies to EPA assistance awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, local and Indian Tribal governments under EPA awards.

The Agency will implement a process for determination, assessment, collection, and reimbursement of recipients' costs.

List of Subjects in 40 CFR Part 30

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit

organizations, Reporting and recordkeeping requirements.

Dated: January 13, 2000.

Carol M. Browner,

Administrator of the Environmental Protection Agency.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR Part 30 as follows:

PART 30—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The heading for part 30 is revised to read as set forth above.

2. The authority citation for part 30 is revised to read as follows:

Authority: 7 U.S.C. 135 *et seq.*; 15 U.S.C. 2601 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 241, 242b, 243, 246, 300f, 300j-1, 300j-2, 300j-3, 1857 *et seq.*; 6901 *et seq.*; 7401 *et seq.*; 9601 *et seq.*; OMB Circular A-110 (64 FR 54926, October 8, 1999).

§ 30.36 [Amended]

3. Section 30.36 is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

4. Section 30.36 is further amended by removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "EPA" in its place.

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT:

Debra E. Sonderman, (Director, Office of Acquisition and Property Management), (202) 208-6431.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The Department of the Interior (DOI) has implemented OMB Circular A-110 at 43 CFR Part 12, Subpart F. There is also a provision at 43 CFR Part 12, Subpart A, Section 12.2(a) which confirms that grants and cooperative agreements which are awarded by DOI to institutions of higher education, hospitals and other non-profit organizations, are governed by Subpart F and OMB Circular A-110. The regulation at Subpart A documents that OMB Circular A-110 is a part of the regulation as well as any changes made to the Circular and subsequently published in the **Federal Register**. Therefore, awards made by DOI were considered covered on the effective date of the changes published in the revised Circular, November 8, 1999.

In order to amend DOI's codification of the Circular at 43 CFR Part 12, Subpart F, DOI is participating in this joint publication so that the recent revisions made by OMB can be reflected. With the publication of this interim final rule, we are incorporating the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act into the implementing regulation at 43 CFR Part 12, Subpart F.

Compliance With Laws, Executive Orders, and Department Policy: In addition to the certifications stated in the general preamble, DOI is including the following statements:

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No takings of personal property will occur as a result of this rule.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951 and 512 DM 2), we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on trust resources. This regulation concerns the information that federally-funded researchers must provide in response to Freedom of Information Act requests related to grants and cooperative agreements awarded to institutions of higher education, hospitals, and other non-profit organizations.

List of Subjects in 43 CFR Part 12

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: January 13, 2000.

John Berry,

Assistant Secretary-Policy, Management and Budget.

For the reasons set forth in the preamble, the Department of the Interior amends 43 CFR part 12 as follows:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 6101 note, 7501; 41 U.S.C. 252a, 701 *et seq.*; Pub. L. 104-256, 110 Stat. 1396; sec. 501, Pub. L. 105-62, 111 Stat. 1338; sec. 503, Pub. L. 105-62, 111 Stat. 1339; sec. 303, Pub. L. 105-83, 111 Stat. 1589; sec. 307, Pub. L. 105-83, 111 Stat. 1590; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12689, 3 CFR, 1989 Comp., p. 235; E.O. 12731, 3 CFR, 1990 Comp., p. 306; E.O. 13043, 62 FR 19217; 3 CFR 1997 Comp., p. 195; OMB Circular A-102; OMB Circular A-110; and OMB Circular A-133.

Subpart F—Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

§ 12.936 [Amended]

2. Section 12.936 (.36) is amended by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 74

FOR FURTHER INFORMATION CONTACT: Charles Gale, Director, Office of Grants Management, 202-690-6377; for the hearing impaired only: TDD 202-690-6415.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) is publishing this interim final rule to incorporate the provisions of OMB Circular A-110, Section .36, regarding the availability through the Freedom of Information Act of data produced under an award, into the HHS grants administration regulation at 45 CFR Part 74. Consistent with this Circular, this rule applies to HHS awards made to institutions of higher education, hospitals and other non-profit organizations. It also applies to such entities if they are recipients of subawards from States, and local and Indian Tribal governments administering programs under HHS awards. We recognize that OMB's notices for public comment regarding this subject did not address the potential applicability to commercial organizations. Since the applicability of OMB Circular A-110 to commercial organizations is optional and 45 CFR

Part 74 includes other special provisions for commercial organizations (Subpart E), we have decided to be consistent with other Federal agencies which have decided not to apply the new provision to commercial organizations.

List of Subjects in 45 CFR Part 74

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

Dated: January 14, 2000.

Donna E. Shalala,

Secretary.

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 74 as follows:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS; AND CERTAIN GRANTS AND AGREEMENTS WITH STATES, LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS

1. The authority citation for part 74 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A-110 (64 FR 54926, October 8, 1999).

2. Section 74.1(a)(1) is revised to read as follows:

§ 74.1 Purpose and applicability.

(a) * * *

(1) Department of Health and Human Services' (HHS) grants and agreements awarded to institutions of higher education, hospitals, other nonprofit organizations and only to commercial organizations in instances other than those involving procedures to make data available under the Freedom of Information Act provision set forth in § 74.36(d)(1).

* * * * *

§ 74.36 [Amended]

3. Section 74.36 is amended:

a. By revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) as set forth at the end of the common preamble.

b. By removing the phrase "Federal awarding agency" in paragraph (d)(1) each time it appears and adding "HHS Awarding Agency" in its place.

c. By adding paragraph (d)(3) to read as follows:

§ 74.36 Intangible property.

* * * * *

(d) * * *

(3) The requirements set forth in paragraph (d)(1) of this section do not apply to commercial organizations.

* * * * *

4. Section 74.83 is added to subpart E to read as follows:

§ 74.83 Effect on intangible property.

Data sharing (FOIA) requirements as set forth in § 74.36(d)(1) do not apply to commercial organizations.

DEPARTMENT OF TRANSPORTATION

49 CFR Part 19

FOR FURTHER INFORMATION CONTACT:

Robert G. Taylor, U.S. Department of Transportation, Office of the Senior Procurement Executive, M-62, 400 Seventh Street, S.W., Room 7101, Washington, D.C. 20590, phone (202) 366-4289, fax (202)-366-7510, e-mail robert.g.taylor@ost.dot.gov, for grant related questions. Robert I. Ross, U.S. Department of Transportation, Office of the General Counsel, C-10, 400 Seventh Street S.W., Room 10102, Washington, DC 20590, phone (202)366-9156, fax (202)366-9170, email bob.ross@ost.dot.gov, for FOIA related questions.

ADDITIONAL SUPPLEMENTAL INFORMATION:

The Department of Transportation (DOT) is publishing this interim final rule in order to incorporate the provisions of OMB Circular A-110, Section .36 regarding the availability of data produced under an award through the Freedom of Information Act FOIA into DOT's grants administration regulation at 49 CFR Part 19. Additional information has been added to clarify internal DOT procedures for payments made in accordance with the OMB revisions to Section .36 of the Circular.

List of Subjects in 49 CFR Part 19

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

Rodney E. Slater,

Secretary of Transportation.

For the reasons stated in the preamble, the Department of Transportation amends 49 CFR part 19 as follows:

**PART 19—UNIFORM ADMINISTRATIVE
REQUIREMENTS FOR GRANTS AND
AGREEMENTS WITH INSTITUTIONS
OF HIGHER EDUCATION, HOSPITALS,
AND OTHER NON-PROFIT
ORGANIZATIONS**

Authority: 49 U.S.C. 322(a).

§ 19.36 [Amended]

2. Section 19.36 is amended by
revising paragraph (c), redesignating
paragraph (d) as paragraph (e), and

adding a new paragraph (d) as set forth
at the end of the common preamble.

[FR Doc. 00-5674 Filed 3-15-00; 8:45 am]

BILLING CODE 3410-KS-P; 6450-01-P; 7510-01-P;
3510-FA-P; 4710-05-P; 6116-01-P; 4410-18-P; 4510-
23-P; 5001-10-P; 4000-01-P; 7515-01-P; 6560-50-P;
4310-RF-P; 4150-24-P; 4910-62-P

1. The authority citation for part 19
continues to read as follows:

SECTION 600.136 AS AMENDED

Sec. 600.136 Intangible property.

(a) Recipients that are institutions of higher education, hospitals, and other non-profit organizations may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions. (See 10 CFR 600.27)

(c) DOE has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, DOE shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force*

and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) This paragraph (d) applies only to recipients that are institutions of higher education, hospitals, and other non-profit organizations.

(e) For recipients that are institutions of higher education, hospitals, and other non-profit organizations, title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of DOE. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of Sec. 600.134(g).