



# Wells Harbor Pedestrian Bridge Feasibility Study

**WRIGHT-PIERCE**   
Engineering a Better Environment

TY Lin International  
Mathew Eddy Consulting  
Dirigo Student Engineering



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# Introduction

The Wells Harbor Pedestrian Bridge Feasibility Study was developed for the Town of Wells by Wright-Pierce, in association with Dirigo Student Engineering, TY Lin International, Mathew Eddy Consulting. Funding for this plan was provided through a Coastal Competitive Grant from the Maine Coastal Program's National Oceanographic and Atmospheric Administration (NOAA) federal coastal management grant award

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The study focuses on Wells Harbor, a federally designated harbor and channel originally built in the 1950's. The harbor is located at the mouth of the Webhannet River and is surrounded by protected wetlands. The harbor's shallow waters are subject to sedimentation and require periodic dredging to maintain navigability. Public access, parking and municipal facilities are located on both sides of the harbor. Providing a connection between these two sides for pedestrians to utilize has been on the Town's radar for years, in hopes of increasing eco-tourism in the area.

Wells, located on the coast of Southern Maine, is a popular destination for tourists and summer residents. The beaches and historic land preserves such as the Rachel Carson Refuge and the Wells National Estuarine Research Reserve (NERR) attract many visitors annually.

The area of consideration is Wells Harbor and can be seen in Figure 1. The Eastern Shore beach parking lot holds 250 parking spaces and serves the Jetty Beach area as well as a public marina. The main harbor facilities, including the Harbormaster's office, Harbor Park, Lords Harbor Side Restaurant and private marina, are located on the western shore. This area is served by 300-space parking lot that is accessed directly from U.S. Route 1. To reach the eastern shore from the western shore, a five mile trip is required that can take up to 40 minutes during the height of tourist season. Figure 2, provides a view of the harbor and the existing travel route between the western and eastern shores. For many years, the vision of the town has been to connect both shores with a pedestrian bridge.

The feasibility assessment process was developed to incorporate input from a variety of interests, including business and natural resource oriented organizations, boating interests, the Wells National Estuarine Research Reserve, Laudholm Trust, and the Rachel Carson National Wildlife Refuge, the



Figure 1: Project Area

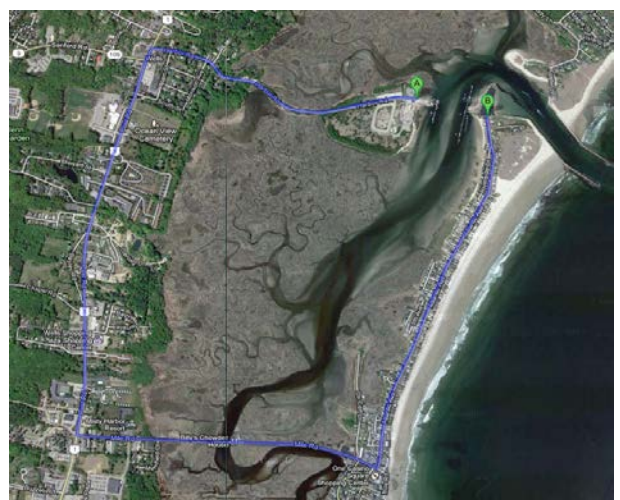


Figure 2: Current trip from eastern to western shore

Board of Selectmen, and others. We are confident that his community participation process has resulted in an updated Harbor Plan that includes appropriate strategies to encourage sustainable, ecologically-oriented, tourist opportunities and an active harbor capable of accommodating commercial and recreational uses.

# 1 Summary of Bridge Design Criteria

## 1.1 GENERAL

A significant portion of the feasibility study has focused on the technical aspects of whether the pedestrian bridge can be built in the environmentally sensitive area of the Wells Harbor, looking at the many considerations that would restrict potential locations of the bridge alignment, as well as span length, and minimum clearance above the water and marine requirements that the bridge must not impede marine traffic or harbor maintenance (dredging) or the ecological cycle in the harbor. In addition, aspects related to Shoreline Zoning ordinances and other municipal regulations will affect alignments and design criteria. Proposed alignments may encroach on existing residential property lines.

Wells Harbor consists of a dredged navigable channel surrounded by relatively shallow waters on either side. Bottom deposits are highly erodible sands, and tend to change regularly based on tidal action, currents and storms. Given the nature of these materials and the bathymetry, the most effective design appears to include a combination of boardwalk sections to traverse shallow waters with a multiple span bridge structure used to traverse to deep channel.

## 1.2 ROUTING AND ALIGNMENT

In considering the options for routing and alignment of the pedestrian bridge, it was important to understand the routing criteria and constraints, imposed due to the sites characteristics. The development of proposed Pedestrian bridge routes to evaluate were selected in order to make an approach easily accessible to and located on public lands, while avoiding areas designated as conservation easements, the Rachel Carson National Wildlife Refuge, designated moorings fields and abutting property owner's parcels. In addition, the routing provided a minimum 18-foot horizontal buffer from the dredge zones and 50-foot buffer from floating docks.

The criteria and constraints led to the identification of three possible routes for consideration. Each of the three options include both boardwalk and bridge sections and shared the same western boardwalk and bridge span with approach located at the end of the west shore beach. This connection is located on public land and is easily accessible by footpaths from Harbor Park. The differences were associated with the approach on the eastern shoreline, as described below:

*East Shore Boardwalk Span Option 1:* Option 1 was a straight connection across the harbor connecting the east shore to the west shore , with the approach to the eastern shore connecting

between two residential homes. While this was a direct connection, the proximity to abutting property owners and the distance from the beach parking lot (pedestrians would be required to walk approximately a quarter mile along Atlantic Ave and Riverside Drive, neither of which currently have sidewalks), provide additional considerations with this option.

*East Shore Boardwalk Span Option 2:* Option 2 also referred to as the Dogleg option was a direct connection from the western beach to the parking lot on the eastern shore, by constructing a boardwalk on the eastern shore spanning 160-feet straight from the bridge and continuing at a right angle 830 feet to an easily accessible approach at the public parking lot, maintaining the clearance from most floating docks.

*East Shore Boardwalk Span Option 3:* Option 3 is similar to option 2 as it includes a right angle , but the idea behind this option would be to provide a direct connection to the easternmost docks. This option would require modifications to float systems, wider floats and ADA compliant gangways.

### 1.3 DESIGN CRITERIA

As noted, the design feasibility has included review in the context of both the boardwalk sections to traverse shallow waters (water depths up to 14-feet) and a bridge span to traverse the deep channel areas.

Design of the bridge superstructure was based on the criteria as defined the Client, along with applicable standards including Maine DOT, ASCE 7 and AASHTO LRFD Bridge Design Specifications and supplemental AASHTO LRFD Guide Specifications for Design of Pedestrian Bridges. The overall guiding design principals used the above referenced criteria and the following additional design considerations were evaluated.

- **Loading Requirements:** In addition to standard pedestrian load, the Pedestrian bridge would be designed to support the weight of a small truck or light-weight maintenance vehicle (H5).
- **Width Requirements:** The deck width shall be 12-feet to meet the minimum requirements for a shared pathway designation.
- **Clearance Requirements:** As requested by the Harbor Advisory Committee to meet navigational requirements, the superstructure had to allow for 10-feet of clearance from high high tide.
- **Boardwalk clearance:** The standard practice in Maine when building pier and boardwalk structures is three feet of freeboard. Our structure follows standard practice and provides three feet of vertical clearance from high high tide.

- **Railing Requirements:** The railings would be designed to be 52-inches in height with a grab bar at 42-inches for pedestrians. Pedestrian railing openings between horizontal or vertical members must be small enough that a 6-inch sphere cannot pass through them in the lower 27 inches. For the portion of pedestrian railing that is higher than 27 inches, openings may be spaced such that an 8-inch sphere cannot pass through them.

### 1.3 CONCEPTUAL BRIDGE DESIGN

#### *Bridge Superstructure*

The “bridge” section was designed to span 300 feet across the channel reaching depths of 23 feet. The bridge structure consists of four 75-foot spans of two adjacent precast concrete 36F NEXT beams. The NEXT beam is capable of spans of up to 85 feet, making it ideal for the span lengths necessary for the bridge. The bridge deck is a composite cast-in-place concrete deck with a gross depth of eight inches. The base of the bridge structure is elevated to provide 10 feet of clearance from high high tide and allow for vessel navigation. Due to the size of the NEXT beam, the minimum bridge width is 16 feet. The wider bridge section can become the focal point of the bridge offering additional space for pedestrian recreation. This area of the crossing would be used to promote environmental education with info-graphics from the Rachel Carson NWR and Wells NERR. This area will also contain benches and provide users space to fish.

#### *Boardwalk*

The boardwalk would consist of a timber frame and either wooden or composite decking. The overall boardwalk width is proposed as 12-feet. The boardwalk would be supported by two transverse 4-inch by 14-inch timber beams. The piles would be notched on both sides to receive the 4-inch by 14-inch beams and the beams are fastened using two 7/8-inch through bolts at each pile. A detail of the proposed pile connection can be seen in Figure 5. The deck would consist of 2-inch by 6-inch decking material and be supported by 3-inch by 12-inch timber joists that are secured to the transverse beam with stainless steel twist straps. Because untreated wood is not recommended in a coastal zone, the timber elements should be constructed with pressure treated wood. The boardwalk spans are generally following the grade or flat, and when approaching the bridge section are raised at a 5% grade for 180-feet to meet the height requirements. All sections would comply with ADA guidelines.

#### *Substructure*

The feasibility of this crossing relies on piles to support the superstructure. The shallower portions of the crossing can utilize a boardwalk design, supported by timber piles that are driven into the blue marine clay. There is a 300-foot section comprised of four spans located toward the center of the channel where the distance to the subsurface becomes too great for timber piles. Because of the



increase in channel depth, the piles must be longer and support a higher static load due to the precast concrete beams. For the bridge portion of the crossing, concrete piles are used.

The piles for the bridge are expected to range from 35-45 feet long to penetrate the bottom substrate enough to provide an allowable loading capacity through frictional resistance. These piles are designed to support 22 kips each in compression. 1-foot diameter circular timber piles were selected for a variety of reasons, including cost. The design contemplates approximately 450 piles in groups of two piles spaced every 10 feet on center longitudinally and 9 feet on center laterally.

For the bridge crossing the navigable portion of the channel, the piles must be 75 feet long to penetrate the substrate enough to provide an allowable loading capacity. These piles are designed to support 210 kips each in compression and 27 kips each in tension. Precast 1-foot by 1-foot square reinforced concrete piles are chosen for the bridge structure. This area of concrete can support the load that must be supported since our piles are end bearing for this portion of the crossing. For the four spans a total of 25 of these piles are needed. They are grouped in bents of 5 piles spaced 3.75 feet apart center to center

# 2 Cost Considerations

## 2.1 COST OVERVIEW

As with any project of this nature, it is essential that the community develop an understanding of both the initial capital costs and future maintenance burden before making a decision to proceed with implementation. The student effort included consideration of the various cost components associated with construction of the facility, as well as certain regulatory costs that may apply. The capital cost projections below have been expanded to include a number of “soft costs” likely to be incurred as a part of implementation, as well as the “hard costs” for construction. In addition, the summary includes projections of the likely range of long-term operation and maintenance costs.

## 2.2 CONSTRUCTION COSTS

Dirigo Student Engineering evaluated the cost associated with all three options of the aforementioned bridge designs. This analysis was based on the total cost of the project, including materials, labor, and installation costs for all items excluding the boardwalk abutments. Included are the components of both the boardwalk section of the crossing and the four individual spans over the deepest part of the channel.

	Option 1	Option 2	Option 3
Construction Costs (sub-total) <sup>1</sup>	\$1,756,639	\$2,251,617	\$2,207,278
Landings/ Abutment/Signage	\$20,000	\$20,000	\$20,000
15% Contingency	\$266,495	\$340,742	\$334,091
<b>Estimate of Construction Costs</b>	<b>\$2,043,134</b>	<b>\$2,612,359</b>	<b>\$2,561,369</b>
<b><i>Additional Cost Considerations</i></b>			
Additional Dock Space	NA	NA	\$55,000
Material Selection (PT Southern Yellow Pine in lieu of Composite)	(\$78,840)	(\$120,240)	(\$111,600)
Riverside-Atlantic Ave/Connection to Parking Lot Area	TBD	NA	NA

Notes:

1: Construction Costs Based on table provided in Summary of project costs, section 7.1 of DSE report and details reviewed in the Dirigo Student report in appendix A.

As noted above, there are additional cost considerations which will be reviewed and additional coordination and scope clarified.

### **2.3 DESIGN, ENGINEERING AND PERMITTING COSTS**

Given the overall nature of the project, terrain, ecological consideration and connectivity, design and engineering for the structure will need to both optimize construction to limit disturbance of the wetland and tidal areas to the maximum extent possible and manage costs for construction. In addition, as noted above, the overall context of the project will require significant local, state and federal coordination and permitting. Typical design engineering costs for a project of this nature and magnitude can be expected to run on the order of 8% of the projected construction cost, or within a range of \$165,000 to \$205,000. We recommend a budget for permit acquisition of \$55,000, although this may vary depending on the nature of project funding, as the use of federally originating funds will require the project to obtain clearance under the National Environmental Policy Act (NEPA) which can be expected to increase that level of effort. Construction phase engineering assistance should be budgeted in the range of \$95,000 to \$125,000. Other costs which should be accounted for in the overall project budget would include: legal fees, local administrative costs, and miscellaneous fees.

As discussed under the section on regulatory considerations, the Maine Department of Environmental Protection (MeDEP) has suggested that implementation of this project can be expected to require compensation for environmental impacts. In the absence of a specific compensation budget, the MeDEP has calculated a “fee in lieu of compensation” based on the projected area of impact. Depending on the mechanism for implementation of the project, we believe a strong potential exists to dramatically reduce this cost.

### **2.4 OPERATION AND MAINTENANCE BUDGET**

Municipal managers are often keenly attuned to the fiscal impact of operations and maintenance costs associated with new infrastructure on existing departments and budgets. It is important, therefore, that the Town include consideration of these costs when considering whether to proceed with the initiative.

Regular annual operations and maintenance components are likely to include the following:

- winter maintenance (snow removal),
- lighting system maintenance,
- lighting electrical costs,

- trash removal, and
- landscaping maintenance.

Over the long-term, the facility will require periodic inspection and replacement of materials. The life expectancy of the various components of the bridge will invariably depend on final material selection, with added investment “up front” in more durable materials tending to reduce the need for future investment in maintenance or replacement.

We would suggest an annual budget for operations and maintenance on the order of \$3,000 to \$4,000 per year for the initial 20 years. After that time, the Town can expect to see an increase due to a higher level of repairs to aging materials.

## **2.5 OVERALL PROJECT BUDGET SUMMARY**

Based on the figures discussed above, it appears that the community should expect that the cost to implement a cross-harbor Pedestrian Bridge should cost on the order of \$2,358,000 to \$2,945,000, exclusive of costs associated with compensation for environmental impacts.

It is important to note that the costs expressed herein are budgetary figures based on a planning level assessment into the feasibility of constructing a cross-harbor pedestrian bridge. In the event the community has a strong interest in implementing such a project, we recommend that further effort be expended to better define the likely magnitude of compensation costs. In addition, it is likely that further targeted geotechnical investigations could be performed to refine the necessary spacing for the piling bents, which could also make the overall project budget more attractive.

# 3 Regulatory Considerations

## 3.1 INTRODUCTION

The proposed Pedestrian Bridge will include regulatory review under Local, State and Federal regulations.

- **Local Regulations:** Town of Wells permitting, Floodplain Management
- **State Regulations:** Maine Natural Resource Protection Act (NRPA) (Maine DEP), Maine Department of Agriculture, Conservation and Forestry, Division of Parks and Public Lands, Maine Submerged Lands (SLL)
- **Federal Regulations:** Army Corps of Engineers, US Coast Guard and Department of Transportation.

## 3.2 LOCAL REGULATIONS

### Town of Wells Permitting

The project area is located within the Residential B zoning district and special districts Harbor, Resource Protection and Shoreland Overlay. The proposed project would be declared as a municipal use and would reference Chapter 145 of the Land Use Regulations as part of the design.

Under Chapter 145, the Town of Wells requires Site Plan approval for (a) new uses on a proposed lot; (b) resumption of a use which has been discontinued for at least two years; and (c) an existing use proposed to expand its gross floor area and/or land area. The review and approval process for the Town of Wells has specific criteria and standards to address as part of the submission and application process.

### Special Flood Hazard Area

The project location is located in a high-risk flood plain zone, also known as a Special Flood Hazard Area (SFHA). The town participates in the National Flood Insurance Program (NFIP) in accordance with The Federal Emergency Management Agency (FEMA). The purpose of the management plan is to ensure no significant backwater will be generated that could flood the upstream conditions. Floodplain Management permitting through Chapter 116 of the Towns Ordinance including the submission of an application for Flood Hazard Development Permit through the Code Enforcement office would be required.

## Wells Harbor Permitting

Chapter 124 of the Code of the Town of Wells regulates marine activities within Wells Harbor. Subsection 124-10 requires permitting through the Board of Selectmen, ACOE and all other necessary agencies prior to work beginning.

## 3.3 STATE REGULATIONS

### Natural Resource Protection Act (NRPA)

The Maine Department of Environmental Protection (Maine DEP) is responsible for the review and permitting projects under the Natural Resource Protection Act (NRPA). The law is focused on protected natural resources and requires permitting when an activity will be (1) Located in, on or over any protected natural resource, or (2) Located adjacent to (A) a coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland, or (B) certain freshwater wetlands. Based on the key points of this project, this will require permitting under the NRPA Individual Permit requirements.

Coordination to date with the MaineDEP has noted two specific areas to be addressed as part of the application

*Existing uses. The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses." (Natural Resources Protection Act, 480D Standards1, p.10.)* The key points here are to make the bridge as aesthetically appealing as possible. While site lines will be lost from the mile bridge, the public will gain many site lines via the bridge that are not currently available. The pedestrian crossing would actually increase the recreational use of the harbor. The waters on the other side of the bridge have very limited navigational use, only high tide fishing. This bridge would create a further barrier to protect the Rachel Carson preserve shores. For portions of the dogleg extending along the eastern shoreline, many of the residential homes are located on an elevated sea wall, and therefore, the ideal location of the boardwalk structure would be below the property site lines.

*Harm to habitats, fisheries. The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life." (Natural Resources Protection Act, 480D Standards 3, p. 11.)* The degree of habitat fracturing is to be determined by the Department of Marine Resources, Maine Fisheries and Wildlife in conjunction with the Maine DEP and may require compensation reaching \$40-\$50 per square foot of the entire structure. Final

determination would be made based on the final design (impact of pilings fracturing the habitat) and coordination and correspondence with state agencies and local groups such as MF&W, Maine Audubon Society, Rachel Carson NWR, Wells National Estuarine Research Reserve (NERR) and Laudholm Trust, Maine Department of Marine Resources and National Marine Fisheries Service.

Should funding be sought under the Maine Department of Transportation (MaineDOT) for this project, evaluation of environmental considerations would be completed through the NEPA process as initiated by the MaineDOT. AS part of the process, Maine DOT would be involved in the overall review and coordination on NRPA permitting, specifically as it would involve in-lieu compensation with respect to the Memorandum of Understanding between the two agencies.

### **Maine Submerged Lands Program**

The State of Maine defines the publicly owned submerged lands in our project location as tidal rivers and all land below mean low water mark. This project should not require a bridge permit as the height clearance is sufficient for navigation under the structure. However, the project will require a submerged lands conveyance for the substructure penetrated the submerged lands. Application to the Maine Department of Agriculture, Conservation and Forestry, Division of Parks and Public Lands for a submerged lands lease will be required, which will include notice to all abutting property owners by the Department with public comment period.

## **3.4 FEDERAL REGULATIONS**

### **Army Corps of Engineers (ACOE)**

Work or structures located in, under or over navigable waters in the US require permitting through the ACOE, in many cases under both Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The Army Corps of Engineers (ACOE) is a federal agency that manages the Wells Harbor Federal Navigation Project. They will negotiate the terms of the permitting application in conjunction with the Natural Resource Protection Act permit. They review permit applications to protect aquatic ecosystems, property rights of neighboring land users, and the general public. All agencies involved must validate the construction of the bridge before consideration is taken by the Army Corps jurisdiction, including the Federal Emergency Management Agency (FEMA) and the National Environmental Protection Agency (NEPA).

### **United States Coast Guard and Department of Transportation**

The United States Coast Guard sets clearance guidelines for navigable waters. The navigable portion is defined as territorial seas and internal waters of the United States subject to tidal influence. Preferred options for this work would be staying outside of the navigable portions of the

river. Guidance provided by the USCG indicated there is no bridge clearance guidelines specified for the Webhannet River, however, maintaining the minimum clearance for the Mile Road Bridge (Island Ledge Road Bridge) was advised.



# 4 Economic Considerations

## 4.1 INTRODUCTION

Combined with the work to re-invent the Routes 9 & 1 intersection with Harbor Road and the Wells Harbor Master Plan, the introduction of a pedestrian bridge from Harbor Road to the Bridge and a marked marsh walk can provide significant economic opportunity for the community. Such initiatives build on the conclusion of the Wells Harbor Master Planning effort in acknowledging that environmental conditions limit the amount of physical construction that can occur in the harbor area, but that environmental, working harbor, and recreation visitations could be an important attraction. Adding the bridge as a bike and pedestrian connection would create a new destination point around which an entire industry could become more focused and centered. Combined with the development of a marsh walk, this would respect the working waterfront image, but add to the diversity of visitors, both in terms of interest and spending potential in the rest of the community. Taking advantage of low impact parking potential, area pedestrian and bike connections would open Wells Harbor to increased visitations as a destination location and create new spending and investment opportunities at the main intersection, the entry to this activity. This could be done without adding greatly to vehicle traffic on Harbor Road. The practical limitations associated with parking capacity ultimately becomes the factor limiting vehicular traffic. The limitations on parking would likely serve to limit the associated vehicular impacts to area residences.

## 4.2 IMPLICATIONS FOR TOURISM

In considering these options, it is important to note the tourism implications. Development of the pedestrian bridge or marsh walkways will increase the view of the harbor as a destination point. For example, the bridge could not only provide additional, safe moorings for local and overnight stays, but would also increase fishing opportunities and visual overlooks in the harbor area. The marsh walk would provide unique walks or fishing opportunities within the Webhannet Marsh system.

While in vogue, this notion of ecotourism would expand the offerings of the community of Wells. As the analysis suggests below, a variety of investments and visitor spending options would be available. Critical investment by the community will also be needed. Research into the practical economic benefits accrued by other coastal communities that have undertaken similar initiatives suggests that these benefits are real:

*“We are a tourist-based economy and the Marsh Walk has been hugely successful at attracting tourists,” said David Owens, owner of Capt. Dave’s Dock Side and Creek Ratz restaurants. “It’s probably one of the best investments that has been pulled off in Georgetown County.”*

This particular quote was drawn from a business in South Carolina, and is representative of those found other communities that have capitalizes on their natural environment. Making critical pedestrian bridge or marsh walk connections within the Webhannet Marsh (many exist in the area already—just connections need to be made) can expand present attractions. Wells is already well known by birders and painters; the marsh walk could be put in place, expand this experience and can expand upon this internet listing: <http://www.scout.me/birdwatching--near--wells-me>.

It is important to note, however, that there is an equal potential for private residential investment in neighborhoods abutting the marsh and Harbor. Through increased access to the marsh and Wells Beach, interest in investing in nearby residential properties will increase. Increased property values will be available to the community while local businesses could increase their reliance on local, year round neighborhood communities.

### 4.3 LOCAL ECONOMIC IMPACTS

Investment in a pedestrian bridge and/or marsh walk will diversify local tourism offerings, expand the economic return of businesses into the “shoulder seasons”, increase residential investment, and result in increased value and investment in areas businesses. Local implications associated with such investment can be divided into the following four areas:

- Investment in the local neighborhood;
- Investment and redevelopment;
- Connection to existing lodging systems lacking beach access; and
- Implications for a “smart growth” center/village attraction (see below)

***The Local Neighborhood.*** The thesis considered here is that the value, in terms of housing and personal investment for the Wells Harbor neighborhoods, would increase with the addition of a pedestrian bridge. With direct access to Wells Beach, albeit a slightly longer one, this amenity would not require the need for vehicular access by the neighborhood residents to Wells Beach. A generally straightforward assessment can provide a glimpse—the baseline property values on the Harbor side of properties (along the main entry point) are compared to the Ocean Avenue (Fifth Avenue) neighborhood, the rear properties only: commercial, vacant, or exempt land have been removed from the analysis).

Neighborhoods	Acres	Building Value	Land Value	Total Value
Harbor road	19.82	\$ 7,833,300.00	\$ 5,528,800.00	\$ 13,611,890.00
avg	0.389	\$ 153,594.12	\$ 108,407.84	\$ 266,899.80
Fifth Avenue	4.363	\$ 6,179,100.00	\$ 16,514,150.00	\$ 22,722,710.00
avg	0.101	\$ 143,700.00	\$ 384,050.00	\$ 528,435.12

While still not on the ocean, land values along Fifth Avenue are roughly triple that of the Harbor Avenue area, while in general the building values are not dissimilar. So most of the value captured in this area is due to the land, ocean, and, its location. It appears that a significant percentage of that value can be tied to indirect/direct access to Wells Beach, which the pedestrian bridge would now permit.

So if we assume that access to the beach represents a quarter of the total land value, than the addition of a pedestrian bridge may result, in the long term, of an additional \$355,865 per household property and almost \$4.5 million in new value to the community (at the present tax rate, that equates to almost \$39,000 in new dollars).

***Investment and Redevelopment.*** In examining the area in question, there are three areas of reinvestment or redevelopment possible: local neighborhoods, area businesses, including the campgrounds, and the growth center (see below). The possibilities all relate to the new access via the pedestrian bridge or the availability of a new attraction, an organized marsh walk.

The local neighborhoods may provide a significant source for reinvestment. While we cited the potential values for housing with beach access above, we did not include the immediate secondary impact: the likelihood for home improvements. Looking at the types of improvements that have occurred Wells Beach side, we would anticipate substantial upgrade over time. A simple increase of \$50,000 as result of the new increase could result in additional tax dollars of roughly \$450 annually. If half the units along Harbor Road made such improvements, there could be an additional \$10,000 in new tax revenue. More importantly however, is that those improvements would also result in changes in appraisals that may be quite higher.

There is the likelihood for the substantial increase in value related to area businesses involved in lodging/campgrounds. This investment could also lead to property conversions, with associated investments. Between Harbor Road and Hardy's Bluff, there exist a number of lodging facilities that represent an opportunity for investment. This may simply be the conversion of the existing cottages, or could include wholesale redevelopment. Having direct beach access via a new pedestrian bridge at least permits the owners to consider different financial options. This could also occur to the south of the abutting cemetery. Existing examples (e.g. Village by the Sea) could represent an improvement in the lodging experience, as well as in property values. This redevelopment process would not be expected to happen immediately, but more likely as owners face various decisions about the futures of their properties, which may presently be functioning reasonably well<sup>1</sup>. However, an examination of visitors to Maine finds that a vast majority of first time and repeat visitors prefer hotels, motel or resort accommodations (with spa, pool and other services)—the pedestrian bridge and marsh walk could be a key marketing component to change the character of what is presently available. That same study also found that 70% of first time visitors are searching for an outdoor or touring experience; that droops only slightly for repeat visitors (Maine office of Tourism, 2011).

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<sup>1</sup> The community is presently assessing the impact of these "cabin or seasonal" communities, so their value to the community may be better understood in the near future.

The reinvestment in Route 1 commercial properties, around a redefined growth center (see below) represents an additional option to redevelopment or the re-engineering of existing businesses. Wells, along the route 1 corridor, has developed a variety of retail sales, services, restaurants, with some specialty antique and art shops included. Many of the structures are particularly unique, having some historical value. They are presently hampered by the “sprawl” nature by which they developed along the Route 1 strip. They reflect good solid businesses, but the area is hampered by lack of a core and a coordinated business and visual sense.

We believe that some of this sprawl quality could be ameliorated through the addition of the pedestrian access plans, all leading to and from the pedestrian bridge and marsh walk parking area. Sidewalks, such as the ones now being constructed along the south side of Route 1, could be part of a series of interlocking connections off between the Harbor, the growth center and Route 1 businesses. This connectivity, with some work on visual consistency, could lead to increased investment into the area directly around the Route 1, Route 9, and Harbor Road intersections. With an upgrade in business development akin to what has occurred in Ogunquit along Route 1, *Wells could recapture the center of the community and establish a new tourist presence.*

For these present Route 1 properties, it means a different type of visitor that is arriving to a core, destination point. That core serves and is connected to the new pedestrian bridge, the marsh walk, and the existing harbor and beach interests. Interconnecting systems could lead to and from the existing adjacent lodgings (also where connectivity should be strengthened), with the marsh walk and connections avoiding Route 1 (for an example, view the permanent trail system, with connections to area sidewalks and businesses, in Stowe, Vermont; [http://www.stowe-village.com/BikePath/bikepath\\_map.html](http://www.stowe-village.com/BikePath/bikepath_map.html)). With pedestrian safety, connectivity, and natural experience as a core component, these Route 1 businesses will feel more connected.

Hence, with a greater flow in local and overnight customers walking by, or having Route 1 more available to a core center and engaging connecting systems, the consumer will tend to expand beyond the “Route 1 *drive by* opportunity”. With community investment into the bridge or marsh walk, local business owners will have an ability to expand the types of offerings made available and commit further investment to their properties.

While the connectivity piece is a unique coordinated investment over time, immediate direct access to the beach via the bridge would simply increase visitor traffic to existing businesses accessing the beach. The Wells Harbor Master Plan discussed the existing businesses and what they bring to the table at present. The Harbor Master Plan also discussed the physical limitations pertaining to permanent development, but did note opportunities in the areas of: improving parking, circulation, and better utilizing existing space. Options might include:

- **Restaurants.** With a different clientele, the restaurants could consider expansions or modifications that would permit them to better serve the beach visitor. This would mean the addition of faster service in the form of window or adjacent cart service. Certainly, mobile carts could carve out niches in other areas around the park and entry way.

- ***Shops (including beach-oriented products).*** This could be an expansion of the present fish shop, or the addition of one or two smaller shops out by the intersection or “defined growth center”. The product line would be oriented toward the beach visitor.
- ***Biker/Hiker Interest.*** Bridge access would be attractive to the biking traveler or hiker as a destination point. Existing businesses, or new ones, should expand their product line to meet those interests. Bikers are often looking for key points of interest to stop and visit and create new needs (for example, bike shops and related services). This area of ecotourism is one of the fastest growing in the tourism industry:

Investing in bicycle infrastructure and promoting cycling can draw new money to a local economy by attracting visitors who may otherwise spend their vacation dollars elsewhere. Maine, which since 1991 has made a concerted effort to improve its bicycle infrastructure by widening shoulders and creating shared-use paths, generates \$66 million a year in bicycle tourism. (The Economic Benefits of Bicycle Infrastructure Investments, League of American Bicyclists, 2009)

### 4.4 REGIONAL IMPLICATIONS

Wells is rich with alternative modes of transportation available to it. Around Wells, there exist several opportunities from which a pedestrian/bikeway bridge could draw:

- East Coast Greenway
- Amtrack/Downeaster Destination
- Existing Route 1 and Interstate 95 Travelers

The potential development of a pedestrian bridge and/or marsh walk offers an opportunity to increase specific types of daytime and lodging visitors to this area. This can be on a much larger regional basis. A study of tourist visitor patterns suggest that with improved amenities and services to specifically serve those on bike, train, or foot, new Wells Harbor activities could expand the reason and period for visitation, aiding the existing lodging industry. Surveys by Digital Resources for the Maine Office of Tourism have suggested that one of the higher level of visits, beyond just extended stays, are the day trippers, or include those that make the southern Maine area of focus, looking for one or two stops along their visiting experience. The pedestrian bridge and marsh walk, with a corresponding re-shaping of the Wells Core, will be attractive to those users.

For example, almost 70% of full time, day leisure visitors are seeking outdoor or touring experiences, while over 50% of repeat visitors are seeking the same (Maine Tourism, 2011). Those

finding their way to wells, through these unique connections, are seeking an experience that the bridge, the beach, and the marsh walk can provide. Linked with better accommodations and connectivity, this could be the core of a new growth strategy that, as was noted by existing harbor businesses, could add customers well into the shoulder seasons.

This strategy should focus on connecting to two regional attractions: the Wells Regional Transportation system and the East Coast Greenway. These two areas in and of themselves are now attracting visitors. Investment in connecting them to the Harbor area and these amenities will increase their attractiveness. With the implementation of connectivity strategies above, these local networks that connect Route 1, Core, the station, and the Harbor will now be connected to a growing regional and national network.

#### **4.5 VILLAGE DEVELOPMENT / GROWTH CENTER**

The pedestrian bridge and marsh walk provide new potential to local neighborhoods and existing lodging businesses. However, its' importance to a Wells commitment to establishing a new core, growth center should not be overlooked. In fact, the bridge, with beach access, could be an interesting game changer. The marsh walk could bring an entirely new set of committed eco-tourists.

Above, we noted the services existing harbor businesses could provide, but also noted the limited space within the harbor that they could do so. We also know that the restaurants, during high season, are generally at capacity but are craving for shoulder season business (spring and fall). With new types of visitors attracted to the pedestrian bridge or marsh walk (local lodging visitors now walking to the beach, beach daytime visitors now having new access, the bike and hiker community having a new destination, and the eco-visitor now coming to the new marsh walks) there could be a very new consumer base arriving to this location, beyond which the harbor business can serve. What that customer arriving at the entry to Wells Harbor now is:

- No real sense of core commercial space;
- A valuable, but under performing, older strip style commercial center which services the locals well, but could be improved, both as an attraction to the new customer but also expanded services to serve local, neighborhood reinvestment;
- Lack of a common theme, both in architecture, appearance and connectivity;
- Lack of connectivity to surrounding properties that might lead the present day visitor away from the harbor in search of other activities (shopping, eating, etc.).

With attractions such as the bridge or marsh walk, once you have attracted visitors and new year round homeowners, it is now time find ways to establish a core that serves them

We suggest two nearby models that do not have to be seen as competitors. Ogunquit (with the beach, Ocean Walk and Perkins cove) and Kennebunk/Kennebunk Port (with connections to Goose Rocks Beach, Kennebunk Beach or land trust properties, for example) offer great experiences for the hiker, biker or motorized scooter visitor. They are not competitors, for they are close enough to be joint attractions: regionally, many of our overnight visitors seek one, two or three places to visit.

Wells has the beach, but has not fully capitalized on the alternative visitor's desired experience for a touring, environmental, or hiking experience linked to a special core visitor's area. In Wells, the visitor presently goes back to the cabin, the cottage, or the car to get someplace else. Opportunity and choice are the linchpins to a successful, extended visitor experience.

Kennebunk Village/Kennebunkport and Ogunquit, at the end of their outdoor and touring experience, offer a unique places to stop, to visit, to eat, to shop. The underdeveloped intersection of Route 1 & 9 and Harbor Road, could fulfill such a role if reconfigured to be both attractive and serve that purpose. Wells offers something the other communities cannot compete with: the Wells Visitor Center/Train Station with close proximity to the Downeaster and the Eastcoast Greenway. The Train Station is the strength that Wells brings to the regional visit. Reconfiguration of the Route 1/9 and Harbor entrance could match neighboring amenities and create a village center that is also attractive to locals.

Starting with the pedestrian bridge and access to Wells Beach, you expand the number and kind of visitors coming to Wells. Let's take the example of the overnight biker, who has utilized the Downeaster or the eastern trail to get to the Wells location. Arriving at the center, the visitor with or without a bike may need:

- Lodging;
- A choice of trails or bike routes;
- Food;
- Supplies; and
- Bike repair services

Add to that, the visitor who will want to rent a bike or other mode of transportation, and you have the makings of biking services center. In addition, the individual will need convenient access to those services. The Wells Growth Center could serve that purpose.

The eco-tourism visitor needs services, retail and accommodations, craving the unique Maine village experience. The addition of the Marsh Walk enhances that visit. The Bridge becomes a destination point. Linked to the Rachel Carson and Ludlow systems, Wells could offer a unique local experience, with a variety of services immediately available to the visitor at the entrance to the Harbor. In that sense, Wells then places itself in a position somewhat stronger than the Kennebunks or Ogunquit, in that the services and environmental experience would now be closely linked. Additionally, some of the educational programs already available in the harbor could be jointly marketed, stretching both the kind of visitor and season in which they visit.

These are two of many possibilities, but they begin to create a core theme around which this Wells Growth Center can build on and market. The goal of the center, however, should be sustainability through all seasons. So the development that occurs there must be diverse enough to capture the demand of the local customer as well. For example, a bike shop might also meet other outdoor recreation activity needs such as skiing. A marketing strategy that considers the melding of ecotourism strategies with sustainable businesses (for example, locally grown food, local business services, and services that can be attractive to nearby entities, such as the business park or medical center) could create year round demand that will permit the center to remain open 12 months a year.

#### **4.6 CONCLUSION – A POSITIVE ECONOMIC VISION**

The pedestrian bridge and marsh walk create unique amenities that can serve the visitor and local resident. The key to their attractiveness: choice and opportunity. By creating two key local amenities and creatively linking them to the community, these infrastructure investments can lead to investment in area properties. This investment is likely to occur in local residential properties and in local business. Existing lodging and restaurants will thrive with new and different types of consumers. A village center, at the entry to these amenities could create the village flavor Wells presently lacks. Connectivity between amenities and the center should help re-engineer this location, as well as feed traditional Route 1 businesses. A coordinated strategy for how to create this synergy should be pursued for its economic value to the community.



# 5 Consideration of Alternatives

## 5.1 GENERAL

The basis for the performance of this feasibility study has been repeated surfacing of comments regarding a desire for increased pedestrian connectivity between the eastern and western shores of Wells Harbor. As with any such feasibility evaluation it is appropriate to include discussion relative to other alternatives.

## 5.2 WATER TAXI / SHUTTLE

During the process of developing the most recent update to the Wells Harbor Master Plan, the question of a water taxi was raised on several occasions. Among the biggest challenges in the assessment of this alternative is the development of reasonable assumptions regarding future demand. Operational scenarios might include either a municipally sponsored operation or a private enterprise.

The commercial viability for a water taxi in Wells Harbor would be predicated upon the demand, which would in turn create a revenue stream that would need to be in excess of the anticipated operational costs. Cost components would likely include the following:

- Staffing (incl. Coast Guard licensed captain),
- Vessel,
- Fuel,
- Insurance,
- Business license, and
- Mooring/dockage

Given an assumed operating schedule of 9:00 am to 9:00 pm seven days a week, likely minimum annual costs might be as follows:

• Staffing	\$40,000
• Vessel	\$ 5,000
• Fuel	\$ 1,000
• Insurance	\$ 1,000
• Other licensing	\$ 500
• Mooring/dockage	<u>\$ 1,000</u>
Annual Cost:	\$48,500

While a municipally-sponsored operation may not need to meet the same financial standards (profitability) as a private enterprise, it is likely that it would need to be economically viable in its own right.

Using an assumed ticket price of \$5 per person (per round trip), the operation would need to transport approximately 9700 passengers per year to be economically viable. Using a duration for the summer tourist season of 120 days, that would require an average of approximately 80 passengers per day. Based on our discussions with several individuals familiar with the operations at the beach and at the harbor, this number does not seem achievable.

Obviously these assumptions lend themselves to adjustment, however, it does not appear that the operation of a water taxi in Wells Harbor is an economically viable alternative.

**APPENDIX A**  
**DIRIGO STUDENT ENGINEERING**  
**REPORT**

**Under Separate Cover**

**APPENDIX B**  
**DIRIGO STUDENT ENGINEERING**  
**POSTER**

**Under Separate Cover**

**APPENDIX C**  
**FUNDING AGENCY REQUIREMENTS**

**RIDER D**  
**NOAA CZM NA11NOS4190077 and NA11NOS4190188**  
**One of Three**

The Provider agrees to comply with the Department of Commerce Financial Assistance Standard Terms and Conditions dated 1/05 attached and the terms and conditions listed below as part of this Rider D.

**A. HOMELAND SECURITY PRESIDENTIAL DIRECTIVE - 12**

If the performance of this contract requires the Provider to have physical access to a Federally controlled facility or access to a Federal information system for more than 180 days, then personal identity verification procedures must be implemented. Any items or services delivered under this contract 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.

**B. COMPLIANCE WITH DEPARTMENT OF COMMERCE BUREAU OF INDUSTRY AND SECURITY EXPORT ADMINISTRATION REGULATIONS**

- (a) This clause applies to the extent that this contract involves access to export-controlled information or technology.
- (b) In performing this contract, the Provider may gain access to export-controlled information or technology. The Provider is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The Provider shall establish and maintain throughout performance of this contract effective export compliance procedures at non-NOAA 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) defined 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 C.F.R. & 724.2(b)(2)(ii).
  - (2) Export-controlled information and technology. Export-controlled information and technology is information and technology subject to the EAR (15 C.F.R. & 730 et.seq.), implemented by the DOC Bureau of Industry and Security, or the International Traffic in Arms Regulations (ITAR) (22C.F.R. & 120-130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-U.S. items, defense articles and any related assistance, services, software, or technical data as defined in the EAR and ITAR.
- (d) The Provider shall control access to all export-controlled information 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 any of the requirements of applicable Federal laws, Executive orders or regulations.



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

### **C. PUBLICATIONS AND ACKNOWLEDGEMENT OF SPONSORSHIP**

The cover of the title page of all reports, studies, or other documents supported in whole or in part by this award or any sub-award shall acknowledge the financial assistance provided by the Coastal Zone Management Act of 1972, as amended, administered by the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

Publication of the results of the research project in the appropriate professional journals is encouraged as an important method of recording and reporting scientific information. The Provider 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 NOAA/DOC. The Provider is also responsible for assuring that every publication of material (including Internet sites) based on or developed under an award, except scientific articles or papers appearing in scientific, technical, or professional journals, contain the following disclaimer:

“This [report/video] was prepared by [Provider name] under award [number] from the National Oceanic and Atmospheric Administration, 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 National Oceanic and Atmospheric Administration or the Department of Commerce.”

This acknowledgment of sponsorship also applies to videos produced under DOC/NOAA financial assistance awards.

### **D. GEOSPATIAL DATA**

For any CZM award that is providing federal funds for collection or production of geospatial data (e.g. GIS data layers), the Provider will comply to the maximum extent practicable with Executive Order 12906 “Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure” Federal Register Vol. 59, Number 71, pp. 17671 - 17674, the award Provider shall document all new geospatial data it collects or produces using the standard developed by the Federal Geographic Data Committee (FGDC), and make that standardized documentation electronically accessible to OCRM. The standard can be found at <http://www.fgdc.gov/metadata/csdgm>.

### **E. TRAVEL**

The Provider is prohibited from expending Federal or non-Federal grant funds, or in-kind goods or services, for purposes of providing transportation, travel, and any other expenses for any Federal employee.

**F. Lobbying Special Award Conditions**

Pursuant to the terms and conditions of this award, no funds used for the payment of membership dues to any entity are to be used by that entity to engage in lobbying activities, as provided in OMB Circular No. A-87 and other relevant law and regulation.

DEPARTMENT OF COMMERCE  
FINANCIAL ASSISTANCE  
STANDARD TERMS AND CONDITIONS



March 2008

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); 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 cost 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 cost 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 6412  
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 of 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 REQUIRMENTS

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. Unless otherwise specified in the terms and conditions of the award, in accordance with 15 CFR § 14.26(c) and (d), for-profit hospitals, commercial entities, and other organizations not required to follow the audit provisions of OMB Circular A-133 shall have an audit performed when the federal share amount awarded is \$500,000 or more over the duration of the project period. An audit is required at least once every two years using the following schedule for audit report submission.
  1. For awards less than 24 months, an audit is required within 90 days from the project expiration date, including the close-out period for the award.
  2. For 2-, or 3 -year awards, an audit is required within 90 days after the end of the first year and within 90 days from the project expiration date including the close-out period for the award.
  3. For 4-, or 5-year awards, an audit is required within 90 days after the end of the first year and third year, and within 90 days from the project expiration date including the close-out period for the award.
- c. Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133, § .235. The Recipient may include a line item in the budget for the cost of the audit. A copy of the program-specific audit shall be submitted to the Grants Officer and to the OIG at the following address:

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. INDIVIDUAL BACKGROUND SCREENING**

An individual background screening will be performed by the OIG on key individuals of organizational units associated with the application at the beginning of the award and at three year intervals thereafter for the life of the award unless (1) the proposed award amount is \$100,000 or less; (2) applicants are accredited colleges and universities; (3) applicants are units of a State or local government; (4) applicants are economic development districts designated by EDA, including those entities whose designations are pending, and councils of governments; or (5) the key individual(s) is/are elected officials of State and local governments who are serving in capacities other than their elected capacities when applying for assistance. In addition, if there is a change in the status of the organization and/or key individuals, or the program officer, OIG, or Grants Officer believes there is good reason to conduct a review sooner, a background screening may be required more frequently. Individual background screenings are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges (e.g., fraud, theft, perjury), or other matters which significantly reflect on the applicant's business integrity, responsibility, or financial integrity. Key individuals of non-exempt organizations associated with this award shall complete Form CD-346, "Applicant for Funding Assistance." An original signature is required. The form is to be submitted to the Grants Specialist named in the award document within 30 days of receipt of this award.

### **.01 Results of Individual Background Screening**

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 individual background screening:

- a. A key individual fails to submit the required Form CD-346, "Applicant for Funding Assistance" within 30 days of receipt of this award;
- b. A key individual makes a false statement or omits a material fact on the Form CD-346;
- c. The individual background screening 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 Individual Background Screening**

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 an award immediately for cause;
- b. Require the removal of any key individual from association with management and/or implementation of the award and require Grants Officer approval of personnel

replacements;

- c. Require the recipient to make other changes as appropriate; and/or
- d. Designate the recipient as high risk and amend the award to assign special award conditions, as appropriate, including making changes 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 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 execute a security interest or other statement of the Federal Interest in real property acquired or improved with Federal funds, acceptable in form and substance to the DOC, which statement must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate. The recipient must provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, shall be returned to the Grants Officer. The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from the Grants Officer. No funds under this award shall be released until the recipient has complied with this provision, unless other arrangements satisfactory to the DOC are made.



## **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, when the award activities remain subject to Federal authority and control. 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 the 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 identified 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](http://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.

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 13256, 13230, and 13270, 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 Acknowledgement 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 a grant award requires recipient organization personnel to have unsupervised physical access to a Federally controlled facility for more than 180 days or access to a Federal information system, such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DUS), to ensure the individual is in a lawful immigration status and that they are eligible for employment within the US. Any items or services delivered under a 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.

**.15 The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 CFR Part 175.**

This Act authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the recipient or subrecipient engages in certain activities related to trafficking in persons.

**.16 The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282).**

This Act requires that the Federal government establish a single searchable awards website by January 1, 2008 to enable the public to see where Federal funds for grant and contract awards are being spent. Subaward and subcontract data will be required on the website by January 1, 2009. Funding data retroactive to October 1, 2006 must be reported by all Federal agencies and their recipient and subrecipient organizations.

Data elements will include:

Name of entity receiving award;

Award amount;

Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;

Location of: entity, primary location of performance (City/State/Congressional District/Country; and

Unique identifier of entity.

The data will be required within 30 days of an award. The DOC will be implementing this Act, which will require recipients and subrecipients to report the required data.



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