(''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

(ll) *Suspension* means an action by a awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, ''Debarment and Suspension.''

(mm) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(nn) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(oo) *Unliquidated obligations,* for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(pp) *Unobligated balance* means the portion of the funds authorized by the awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(qq) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(rr) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 145.3 Effect on other issuances.

For awards subject to this regulation, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this regulation are superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 145.4.

§ 145.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this regulation when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this regulation shall be permitted only in unusual circumstances. The Department may apply more restrictive requirements to a class of recipients when approved by OMB. The Department may apply less restrictive requirements when issuing small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the Department. Deviation requests shall be submitted to the Office of the Procurement Executive (A/OPE) for approval or transmittal to OMB.

§ 145.5 Subawards.

Unless sections of this regulation specifically exclude subrecipients from coverage, the provisions of this regulation shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of part 135 of this chapter implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

Subpart B—Pre-Award Requirements

§ 145.10 Purpose.

Sections 145.11 through 145.17 prescribe forms and instructions and other

pre-award matters to be used in applying for Federal awards.

§ 145.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The Department may not award grants or cooperative agreements unless specific statutory authority exists for a program allowing the award of Federal assistance.

(b) *Public notice and priority setting.*

(1) The Department shall notify the public of its intended funding priorities for discretionary grant programs, except for:

(i) Awards for which funding priorities are established by Federal statute,

(ii) Small awards, and

(iii) Awards for which program purposes would not be served by public notice.

(2) In the case of the exception in paragraph (b)(1)(iii) of this section, the award file shall be documented with the rationale for not issuing a public notice.

§ 145.12 Forms for applying for Federal assistance.

(a) Department Grants Officers shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Grants Officer and approved by the Office of the Procurement Executive (A/OPE).

(c) For Federal programs covered by Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Department Grants Officers who do not use the SF–424 form should indicate whether the application is subject to review by the State under Executive Order 12372.

§ 145.13 Debarment and suspension.

The Department and recipients shall comply with the nonprocurement debarment and suspension common rule implementing Executive Orders 12549 and 12689, ''Debarment and Suspension,'' as implemented in 22 CFR part 137. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 145.14 Special award conditions.

If an applicant or recipient: has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this regulation, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, the Department may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: The nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of