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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 52b

RIN 0925–AA04

National Institutes of Health Construction Grants

AGENCY: National Institutes of Health, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is revising regulations governing National Cancer Institute construction grants for the purpose of making them applicable to all NIH financial assistance programs with construction grant authority, including programs transferred to NIH by the ADAMHA Reorganization Act and two programs authorized by the National Institutes of Health Revitalization Act of 1993. The regulations are also being revised to update statutory references in the regulations, add new administrative and technical requirements for the awarding of these grants, and add procedures for the recovery of grant funds for facilities no longer used for biomedical research purposes.

DATES: This final rule is effective on December 22, 1999. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register, effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore, NIH Regulations Officer, National Institutes of Health, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20852, or telephone 301–496–4607 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Under the Public Health Service (PHS) Act, as amended (42 U.S.C. 201 *et seq.*), construction or modernization grant authority exists in sections 413(b)(6)(B) and 414(b) for the National Cancer Institute (construction grants); sections 421(b)(2)(B) and 422(c)(3) for the National Heart, Lung, and Blood Institute (construction grants); section 441(a) for the National Institute of Arthritis and Musculoskeletal and Skin Diseases (modernization grants); section 455 for the National Eye Institute (construction grants); section 464C(a) for the National Institute on Deafness and Other Communication Disorders (modernization grants); section 464P(b)(3) for the National Institute on Drug Abuse (construction grants); section 481A(a) for the Director of NIH, acting through the Director of the National Center for Research Resources (construction and modernization grants); section 481B(a) for the Director of NIH (construction grants); and section 2354(a)(5)(B) for NIH AIDS research programs (construction grants).

NIH is revising the existing regulations at 42 CFR part 52b (National Cancer Institute Construction Grants) to make them applicable to all NIH financial assistance programs with construction or modernization grant authority, except for certain alterations and improvements under research project grants and center grants, and to make other changes. NIH announced proposed revisions to the existing regulations at 42 CFR part 52b (National Cancer Institute Construction Grants) in a notice of proposed rulemaking (NPRM) published in the **Federal Register** on July 6, 1995 (60 FR 35266). One comment was received and it supported the proposed changes. With the exception of minor editorial and the following changes, the regulations are the same as those proposed in the NPRM.

In lieu of specifically listing in § 52b.1, the applicability section, each NIH construction grant program to which the regulations apply, as proposed in the NPRM, the section has been revised and simplified to apply across-the-board to all NIH construction grant programs, except for those few programs specifically excluded by the section. This will have the advantage of assuring that any new NIH construction grant programs enacted by Congress will have implementing regulations without the necessity of having to amend the regulations. The final rule authorizes the Director of NIH to publish a list from time to time of the construction grant programs covered by the regulations. This list would be for informational purposes only and would not restrict the applicability of the regulations.

Part 52b is retitled and the authority citation is amended to add the construction and modernization grant authorities. Sections 52b.2 through 52b.5 are revised in their entirety. Although the current National Cancer Institute (NCI) construction grants regulations do not specify a specific length of time the grantee must use a facility for the purpose for which constructed, § 52b.10(a) of the current regulations requires the applicant to have sufficient title to assure ''for the estimated useful life of the facility,'' as determined by the Director, NCI, undisturbed use and possession for the purpose of the construction and operation of the facility. The regulations governing the administration of grants, 45 CFR part 74, which are incorporated in the current part 52b, provide that the recipient shall use the real property ''for the authorized purpose of the project as long as it is needed'' (§ 74.32(a)). The revised regulations continue to specify continued use of the facility for its originally authorized purpose so long as needed, unless another period is prescribed by statute (e.g., 20 years after completion of construction prescribed by section 481A(c)(1)(B) of the PHS Act for biomedical and behavioral research facilities).

The NPRM continued without change the provisions relating to title (sufficient for the estimated useful life as determined by the awarding component director) and incorporation of 45 CFR part 74 (use for the originally authorized purpose so long as needed), but added express provisions authorizing alternate use in appropriate circumstances and the right of the Federal Government to recover in the event a facility is sold or transferred to an ineligible third party or diverted to an unauthorized purpose, prior to the expiration of its useful life. Those provisions remain in this final rule with minor modifications to conform more closely to the pertinent provisions of 45 CFR part 74.

Sections 52b.6, 52b.7, 52b.8, 52b.9, 52b.10, and 52b.11 are revised and redesignated as indicated on the following chart, which shows the new section designations of all the sections of former part 52b:

Former section	New section
52b.1	52b.1
52b.2	52b.2
52b.3	52b.3
52b.4	52b.4
52b.5	52b.5
52b.6	52b.14
52b.7	52b.6
52b.8	52b.10
52b.9	52b.11
52b.10	52b.13
52b.11	52b.12
None	52b.7
None	52b.8
None	52b.9

Three new sections are added to part 52b. A new § 52b.7 is added specifying facility usage requirements; a new § 52b.8 is added concerning NIH monitoring of the usage of biomedical research facilities constructed with federal funds; and a new § 52b.9 is added concerning procedures to recover federal funds for facilities that cease to be used for biomedical research purposes. Section 52b.10 adds new

requirements relating to the recording of the Notice of Federal Interest and the purchasing of insurance.

The introductory paragraph of § 52b.11, as proposed in the NPRM, is revised for editorial purposes. Sections 52b.12 and 52b.14, as proposed in the NPRM, are revised to (1) include additional information concerning where copies of the standards that are incorporated by reference may be inspected and obtained, (2) comply with **Federal Register** format requirements for the references, and (3) consolidate the published standards that are incorporated by reference in § 52b.12 and the other laws, regulations, executive orders, and policies referenced in § 52b.14. Additionally, the heading of § 52b.14 is revised to include public laws and executive orders.

These construction grant regulations do not apply to minor alterations and renovations under research project grants. Minor alterations and renovations are covered under the regulations at 42 CFR part 52 governing the award of research project grants. These regulations also do not cover alterations and renovations under NIH center grants. Those alterations and renovations are covered under the regulations for that program at 42 CFR part 52a.

HHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and title X, part C of Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

The following statements are provided for the information of the public.

Executive Order 12866

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term ''significant regulatory action'' contained in section 3(f) of the Order, prepublication review by the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), is necessary. This rule was reviewed under Executive Order 12866 and was deemed not significant.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. The Secretary of Health and Human Services certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act, is not required. The rule codifies in the CFR policies and procedures of the Federal Government which are used by the NIH to administer construction grants awarded under the authority set forth in sections 413(b)(6)(B), 414(b), 421(b)(2)(B), 422(c)(3), 441(a), 455, 464C(a), 464P(b)(3), 481A(a), 481B(a), and 2354(a)(5)(B) of the PHS Act and updates the current regulations. These grants do not have significant economic or policy impact on a broad cross-section of the public. Furthermore, the revised regulations only affect the limited number of public or private nonprofit agencies or institutions which are interested in participating in the construction grant programs. No agency or institution is required to participate in these programs. Apart from the requirements for applicants and award recipients necessary to operate these programs, the revised regulations include no standards or requirements which burden small entities.

Paperwork Reduction Act

Sections 52b.9(b), 52b.10(f), 52b.10(g), and 52b.11(b) of this rule contain information collection requirements which are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Section 52b.10(g) also contains recordkeeping requirements which are subject to OMB approval under the Paperwork Reduction Act. The information collection language in §§ 52b.9(b), 52b.10(f), 52b.10(g), and 52b.11(b), and the recordkeeping language in § 52b.10(g) is approved under OMB Control Number 0925–0424 (expires November 30, 2001).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered programs affected by these proposed regulations are:

93.392—Cancer Construction

93.131—Shared Research Facilities for Heart, Lung, and Blood Diseases

93.846—Arthritis, Musculoskeletal and Skin Diseases Research

List of Subjects in 42 CFR Part 52b

Grant programs—health, Health facilities, Incorporation by reference, Medical research, Reporting and recordkeeping requirements.

Dated: August 29, 1999.

Harold Varmus,

Director, National Institutes of Health.

For the reasons set out in the preamble, part 52b of title 42 of the Code of Federal Regulations is revised to read as follows:

PART 52b—NATIONAL INSTITUTES OF HEALTH CONSTRUCTION GRANTS

Sec.

Authority: 42 U.S.C. 216, 285a-2, 285a-3, 285b-3, 285b-4, 285d-6, 285i, 285m-3, 285o-4, 287a-2, 287a-3, 300cc-41.

§ 52b.1 To what programs do these regulations apply?

(a) *General.* Except as provided in paragraph (c) of this section, this part applies to all grants awarded by NIH and its components for construction of new buildings and the alteration, renovation, remodeling, improvement, expansion, and repair of existing buildings, including the provision of equipment necessary to make the building (or applicable part of the building) suitable for the purpose for which it was constructed.

(b) *Specific programs covered.* From time to time the Director may publish a list of the construction grant programs covered by this part. The list is for informational purposes only and is not intended to restrict the statement of applicability in paragraph (a) of this section. In addition, information on particular construction grant programs,

including applications and instructions, may be obtained from the component of NIH that administers the program.

(c) *Specific programs excluded.* The regulations of this part do not apply to minor alterations, renovations, or repairs funded under a research project grant (see part 52 of this chapter) or alterations or renovations funded under an NIH center grant (see part 52a of this chapter).

§ 52b.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

Construction means the construction of new buildings or the modernization of, or the completion of shell space in, existing buildings (including the installation of fixed equipment), but excluding the cost of land acquisition and off-site improvements.

Construction grant means funds awarded for construction in accordance with the applicable provisions of the Act and this part.

Director means the Director of NIH or the director of an NIH national research institute, center, or other component of NIH, authorized to award grants for construction under the applicable provisions of the Act, and any official to whom the authority involved is delegated.

Federal share with respect to any construction project means the proportion, expressed as a percentage, of the cost of a project to be paid by a grant award under the Act.

HHS, DHHS, and *Department* mean the Department of Health and Human Services.

Institute means any national research institute, center, or other agency of the National Institutes of Health.

Modernization means the alteration, renovation, remodeling, improvement, expansion, and/or repair of existing buildings and the provision of equipment necessary to make the building suitable for use for the purposes of the particular program.

NIH means the National Institutes of Health and its organizational components that award construction grants.

Nonprofit as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

Project means the particular construction activity which is supported by a grant under this part.

Secretary means the Secretary of Health and Human Services and any official to whom the authority involved is delegated.

§ 52b.3 Who is eligible to apply?

In order to be eligible for a construction grant under this part, the applicant must:

(a) Be a public or private nonprofit agency or institution;

(b) Be located in a state, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the successor states of the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau); and

(c) Meet any additional eligibility criteria specified in the applicable provisions of the Act.

§ 52b.4 How to apply.

Applications for construction grants under this part shall be made at the times and in the form and manner as the Secretary may prescribe.

§ 52b.5 How will NIH evaluate applications?

(a) In evaluating and approving applications for construction grants under this part, the Director shall take into account, among other pertinent factors, the following:

(1) The priority score assigned to the application by an NIH peer review group as described in paragraph (b) of this section;

(2) The relevance of the project for which construction is proposed to the objectives and priorities of the particular program authorized by the Act;

(3) The scientific merit of the research activities that will be carried out in the proposed facility;

(4) The scientific or professional standing or reputation of the applicant and of its existing or proposed officers and research staff;

(5) The availability, by affiliation or other association, of other scientific or health personnel and facilities to the extent necessary to carry out effectively the program proposed for the facility, including the adequacy of an acceptable biohazard control and containment program when warranted;

(6) The need for the facility and its total effects on similar or related facilities in the locale, and the need for appropriate geographic distribution of similar facilities; and

(7) The financial need of the applicant.

(b) The priority score of the application shall be based, among other pertinent factors, on the following criteria:

(1) The scientific merit of the total program and its component parts to be carried out in the facility;

(2) The administrative and leadership capabilities of the applicant's officers and staff;

(3) The organization of the applicant's research program and its relationship with the applicant's overall research programs;

(4) The anticipated effect of the project on other relevant research programs and facilities in the geographic area, and nationwide;

(5) The need for the project or additional space; and

(6) The project cost and design.

§ 52b.6 What is the rate of federal financial participation?

(a) Unless otherwise specified by statute, the rate of federal financial participation in a construction project supported by a grant under this part shall not be more than 50 percent of the necessary allowable costs of construction as determined by the Director, except that when the Director finds good cause for waiving this limitation, the amount of the construction grant may be more than 50 percent of the necessary allowable costs of construction.

(b) Subject to paragraph (a) of this section, the Director shall set the actual rate of federal financial participation in the necessary allowable costs of construction, taking into consideration the most effective use of available federal funds to further the purposes of the applicable provisions of the Act.

§ 52b.7 How is the grantee obligated to use the facility?

(a) The grantee shall use the facility (or that portion of the facility supported by a grant under this part) for its originally authorized purpose so long as needed for that purpose, or other period prescribed by statute, unless the grantee obtains advance approval from the Director, in the form and manner as the Director may prescribe, to use the facility for another purpose. Use for other purposes shall be limited as prescribed in § 52b.9(c)(2).

(b) The Director, in determining whether to approve an alternative use of the facility, shall take into consideration the extent to which:

(1) The facility will be used by the grantee or other owner for a purpose described in § 52b.9(c)(2); or

(2) There are reasonable assurances that alternative facilities not previously used for NIH supported research will be utilized to carry out the original purpose as prescribed in § 52b.9(c)(1).

(c) *Sale or transfer.* In the form and manner as the Director may prescribe,

the grantee may request the Director's approval to sell the facility or transfer title to a third party eligible under § 52b.3 for continued use of the facility for an authorized purpose in accordance with paragraphs (a) and (b) of this section. If approval is permissible under the Act or other federal statute and is granted, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in 45 CFR part 74, the regulations of this part, and the other terms and conditions of the grant.

§ 52b.8 How will NIH monitor the use of facilities constructed with federal funds?

NIH may monitor the use of each facility constructed with funds awarded under this part to ensure its continued use for the originally authorized research purpose, by means of reviewing periodic facility use certifications or reports, site visits, and other appropriate means.

§ 52b.9 What is the right of the United States to recover Federal funds when facilities are not used for research or are transferred?

(a) If the grantee plans to cease using the facility for the particular biomedical research or training purposes for which it was constructed as required by § 52b.7 (or alternate use authorized under § 52b.7(a) or paragraph (c) of this section), or the grantee decides to sell or transfer title to an entity ineligible for a grant under § 52b.3, the grantee shall request disposition instructions from NIH in the form and manner as the Director may prescribe. Those instructions shall provide for one of the following alternatives:

(1) The facility may be sold and the grantee or transferee shall pay to the United States an amount computed by multiplying the federal share of the facility times the proceeds from the sale (after deducting the actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). The sales procedures must provide for competition to the extent practicable, and be designed to provide the highest possible return;

(2) The grantee may retain title and shall pay to the United States an amount computed by multiplying the current fair market value of the facility by the federal share of the facility; or

(3) The grantee shall transfer the title to either the United States or to an eligible non-federal party approved by the Director. The grantee shall be entitled to be paid an amount computed by multiplying the current fair market value of the facility by the nonfederal share of the facility.

(b) The grantee or transferor of a facility which is sold or transferred, or the owner of a facility the use of which has changed, as described in paragraph (a) of this section, shall report that action in writing to the Director not later than 10 days from the date on which the sale, transfer, or change occurs, in the form and manner as the Director may prescribe.

(c) In lieu of disposition of a facility pursuant to the provisions of paragraph (a) of this section, the Director may, for good cause, supported by assurances provided by the grantee or transferee, approve one of the following alternatives:

(1) Transfer of the remaining usage obligation to facilities of substantially comparable or greater value or utility, to carry out the biomedical research or training purpose for which the grant was awarded. In this event, the remaining usage obligation shall be released from the original facility constructed with grant funds and transferred to the new facility, and the grantee shall remain subject to all other requirements imposed under this part with respect to the new facility; or

(2) Use the facility for as long as needed, in order of priority, for one of the following purposes:

(i) For other health related activities consistent with the purposes of one or more of the activities of the awarding institute as authorized under title IV or other provisions of the Act;

(ii) To provide training and instruction in the health fields for health professionals or health related information programs for the public; or

(iii) Other health related purposes consistent with one or more of the purposes authorized under the Act.

(d) The right of recovery of the United States set forth in paragraph (a) of this section shall not, prior to judgment, constitute a lien on any facility supported in whole or in part by a federal grant, including a construction grant under this part.

(e) Any amount required to be paid to the United States under this section will be paid to the awarding institute for disposition as required by law.

(Approved by the Office of Management and Budget under Control Number 0925–0424; expires November 30, 2001)

§ 52b.10 What are the terms and conditions of awards?

In addition to any other requirement imposed by law or determined by the Director to be reasonably necessary to fulfill the purposes of the grant, each construction grant shall be subject to the terms and conditions and the grantee assurances required by this section, supported by such documentation as the Director may reasonably require. The Director may, by general policy or for good cause shown by an applicant, approve exceptions to these terms and conditions or assurances where the Director finds that the exceptions are consistent with the applicable provisions of the Act and the purposes of the particular program:

(a) *Title.* The applicant must have a fee simple or other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure for the estimated useful life of the facility, as determined by the Director, undisturbed use and possession for the purpose of the construction and operation of the facility.

(b) *Plans and specifications.* Approval by the Director of the final working drawings, specifications, and cost estimates must be obtained before the project is advertised or placed on the market for bidding. The approval must include a determination by the Director that the final plans and specifications conform to the minimum standards of construction and equipment as set forth in § 52b.12.

(c) *Relocation assistance.* An applicant with an approved project which involves the displacement of persons or businesses shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) and the applicable regulations issued under that Act (45 CFR part 15; 49 CFR part 24).

(d) *Approval of changes in estimated cost.* Unless approved by the Director, the applicant shall not enter into any construction contracts for the project or a part of the project, the cost of which exceeds the estimated cost approved in the terms of an award for that portion of the work covered by the plans and specifications. Exceptions shall be requested in the form and manner as the Director may prescribe.

(e) *Completion responsibility.* The applicant must construct the project, or cause it to be constructed, to final completion in accordance with the grant application, the terms and conditions of the award, and the approved plans and specifications.

(f) *Construction schedule inspection.* Prior to the start of construction, the grantee shall submit an approved copy of the construction schedule (critical path method) to the Director in the form and manner as the Director may prescribe.

(g) *Construction management.* The applicant must provide and maintain competent and adequate construction

management services for inspection at the construction site to ensure that the completed work conforms with the approved plans and specifications. Construction management services shall include daily construction logs and monthly status reports which shall be maintained at the job site and shall be submitted to the Director at the times and in the form and manner as the Director may prescribe.

(h) *Nonfederal share.* Sufficient funds must be available to meet the nonfederal share of the costs of constructing the facility.

(i) *Funds for operation.* Sufficient funds must be available when construction is completed for effective use of the facility for the purposes for which it is being constructed.

(j) *Inspection.* The Director and the Director's representatives shall have access at all reasonable times to all work areas and documents during any stage of construction and the contractor shall provide proper facilities for this access and inspection.

(k) *Accessibility to handicapped persons.* The facility must be designed to comply with the Uniform Federal Accessibility Standards (41 CFR part 101–19, subpart 101–19.6, Appendix A), as modified by other standards prescribed by the Director or the Administrator of General Services. The applicant shall conduct inspections to ensure compliance with these specifications by the contractor.

(l) *Notice of Federal Interest.* The grantee shall record a Notice of Federal Interest in the appropriate official land records of the jurisdiction in which the property is located.

(m) *Title insurance.* The grantee shall purchase a title insurance policy unless a legal opinion has been provided which certifies that the grantee institution has fee simple title to the site free and clear of all liens, easements, rights-of-way, and any other adverse interests which would encumber the project. The Director may waive this requirement upon a request from the grantee adequately documenting self-insurance against the risks involved and containing such other information as the Director may prescribe.

(n) *Physical destruction insurance.* At the time construction is completed or at the time of beneficial occupancy, whichever comes first, the grantee shall purchase an insurance policy which insures the facility for the full appraised value of the property using state certified appraisers. The insurance policy must protect the property from total and partial physical destruction. The insurance policy must be maintained throughout the period of federal interest. The Director may waive this requirement upon a written request from the grantee adequately documenting self-insurance against the risks involved and containing such other information as the Director may prescribe.

(Approved by the Office of Management and Budget under Control Number 0925–0424; expires November 30, 2001)

§ 52b.11 What are the requirements for acquisition and modernization of existing facilities?

Grant awards for the acquisition and modernization of existing facilities are permitted if authorized by the statutes authorizing the construction grant program and shall be subject to the requirements of this section.

(a) *Minimum standards of construction and equipment.* A determination by the Director that the facility conforms (or upon completion of any necessary construction will conform) to the minimum standards of construction and equipment as set forth in § 52b.12 shall be obtained before entering into a final or unconditional contract for the acquisition and/or modernization of facilities. Where the Director finds that exceptions to or modifications of these minimum standards would be consistent with the purposes of the applicable section of the Act under which the acquisition or modernization is supported, the Director may authorize the exceptions or modifications.

(b) *Estimated cost of acquisition and remodeling: suitability of facility.* Each application for a project involving the acquisition of existing facilities shall include in the detailed estimates of the costs of the project, the cost of acquiring the facilities, and any cost of remodeling, renovating or altering the facilities to serve the purposes for which they are acquired. The application shall demonstrate to the satisfaction of the Director that the architectural, mechanical, electrical, plumbing, structural, and other pertinent features of the facility, as modified by any proposed expansion, remodeling, renovation, or alteration, will be suitable for the purposes of the applicable sections of the Act.

(c) *Bona fide sale.* Grant awards for the acquisition of existing facilities shall be subject to the condition that the acquisition constitutes a bona fide sale involving an actual cost to the applicant and will result in additional or improved facilities for purposes of the applicable provisions of the Act.

(d) *Facility previously funded by a federal grant.* No grant for the acquisition or modernization of a facility which has previously been funded in whole or in part by a federal grant for construction, acquisition, or equipment shall serve either to reduce or restrict the liability of the applicant or any other transferor or transferee from any obligation of accountability imposed by the Federal Government by reason of the prior grant.

(Approved by the Office of Management and Budget under Control Number 0925–0424; expires November 30, 2001)

§ 52b.12 What are the minimum requirements of construction and equipment?

(a) *General.* In addition to being subject to other laws, regulations, executive orders, and policies referred to in § 52b.14, the standards set forth in this section have been determined by the Director to constitute minimum requirements of construction and equipment, including the expansion, remodeling, renovation, or alteration of existing buildings, and these standards, as may be amended, or any revisions or successors of these standards, shall apply to all projects for which federal assistance is requested under this part. The publications referenced in this section are hereby incorporated by reference and made a part of the regulations in this part.

(b) *Incorporation by reference.* The Director of the Federal Register approves the incorporations by reference in paragraph (c) of this section in accordance with 5 U.S.C. 552(a)(1) and 1 CFR part 51. Copies may also be obtained from the organizations at the addresses listed in paragraph (c) of this section. Copies may be inspected at the National Cancer Institute, Executive Plaza North, Room 539, 6130 Executive Boulevard, Rockville, MD 20852 (telephone 301–496–8534; not a toll-free number); the National Center for Research Services, Building 31, Room 3B11, 9000 Rockville Pike, Bethesda, MD 20892 (telephone 301–496–5793); not a toll-free number); and at the Office of the Federal Register, 800 North Capital Street, NW, Suite 700, Washington, DC. The Director may for good cause shown, approve plans and specifications which contain deviations from the requirements prescribed in paragraph (c) of this section, if the Director is satisfied that the purposes of the requirements have been fulfilled. In addition to these requirements, each project shall meet the requirements of the applicable state and local codes and ordinances relating to construction.

(c) *Design and construction standards.* The facility shall comply with the following mandatory design and construction standards:

(1) ''Guidelines for Design and Construction of Hospital and Health Care Facilities'' (1996–97). American Institute of Architects Academy of Architecture for Health (AIA); available from AIA Rizzoli Catalogue Sales, 117 Post Street, San Francisco, CA 94108 (telephone 1–800–522–6657, fax 415–984–0024).

(2) 1995 ASHRAE Handbook: Heating, Ventilating, and Air Conditioning Applications (1995), Chapter 13, ''Laboratory Systems.'' American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329 (telephone 404–636–8400).

(3) ICBO ''Uniform Building Code,'' Volumes 1–3 (1997). International Conference of Building Officials (ICBO), 5360 South Workman Mill Road, Whittier, CA 90601–2298 (telephone 562–699–0541 or 800–284–4406).

(4) BOCA National Building Code (1996) 1998 Supplement, Building Officials and Code Administrators International, Inc. (BOCA), 4051 West Fossmoor Road, Country Club Hills, IL 60478–5795 (telephone 708–799–4981; fax 708–799–4981).

(5) ''Recommended Lateral Force Requirements and Commentary'' (1996). Structural Engineers Association of California; available from International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601–2298 (telephone 562–699–0541).

(6) ''Prudent Practices in the Laboratory: Handling and Disposal of Chemicals'' (1995). National Research Council; available from National Academy Press, 8700 Spectrum Drive, Landover, MD 20785 (telephone 1–800–624–6242).

(7) The following material is available for purchase from the National Fire Protection Association (NFPA), 11 Tracy Drive, Avon, MA 02322–9908 (telephone 617–770–3000 or 1–800–735–0100):

(i) NFPA 45, ''Standard on Protection for Laboratories Using Chemicals'' (1996).

(ii) NFPA 70, ''National Electric Code'' (1996).

(iii) NFPA 99, Chapter 4, ''Gas and Vacuum Systems'' (1996).

(iv) NFPA 101, ''Life Safety Code'' (1997).

(v) NFPA ''Health Care Facilities Handbook'' (1996).

(8) NSF Standard No. 49 for Class II (Laminar Flow) Biohazard Cabinetry (1992). National Sanitation Foundation (NSF), 3475 Plymouth Road, Box 1468, Ann Arbor, MI 48106 (telephone 734–769–9010).

(9) ACGIH ''Industrial Ventilation: A Manual of Recommended Practice'' (1998). American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240–1634 (telephone 513–742–2020).

(10) AIHA ''Laboratory Ventilation Workbook'' (1994). American Industrial Hygiene Association (AIHA), 2700 Prosperity Avenue, Suite 250, Fairfax, VA 22031 (telephone 703–849–8888).

(11) The following material is available for purchase from the Southern Building Code Congress (SBCC), 900 Montclair Road, Birmingham, AL 35213–1206 (telephone 205–591–1853; fax 202–591–0075:

(i) SBCC ''International Standard Plumbing Code'' (1997).

(ii) SBCC ''Standard Building Code'' (1997).

§ 52b.13 Additional conditions.

The Director may with respect to any grant award impose additional conditions consistent with the regulations of this part prior to or at the time of any award when in the Director's judgment the conditions are necessary to assure or protect advancement of the approved project, the purposes of the applicable provisions of the Act, or the conservation of grant funds.

§ 52b.14 Other federal laws, regulations, executive orders, and policies that apply.

Other federal laws, regulations, executive orders, and policies apply to grants under this part. These include, but are not necessarily limited to:

(a) *Laws.*

An Act to Provide for the Preservation of Historical and Archeological Data (and other purposes), as amended (16 U.S.C. 469 *et seq.*).

Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*).

Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 *et seq.*).

Flood Disaster Protection Act of 1973, section 202, as amended (42 U.S.C. 4106).

National Historic Preservation Act, section 106, as amended (16 U.S.C. 470f).

Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*).

(b) *Regulations.*

9 CFR part 3—Standards (Animal Welfare).

29 CFR 1910.1450—Occupational exposure to hazardous chemicals in laboratories.

36 CFR part 1190—Minimum guidelines and requirements for accessible design.

41 CFR part 101–19, subpart 101–19.6—Accommodations for the physically handicapped.

41 CFR part 101–19, subpart 101–19.6, Appendix A—Uniform Federal accessibility standards.

42 CFR part 50, subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science.

42 CFR part 50, subpart D—Public Health Service grant appeals procedure.

45 CFR part 15—Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.

45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

45 CFR part 46—Protection of human subjects.

45 CFR part 74—Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations; and certain grants and agreements with states, local governments and Indian tribal governments.

45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964.

45 CFR part 81—Practice and procedure for hearings under part 80 of this chapter.

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefitting from Federal financial assistance.

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments.

45 CFR part 93—New restrictions on lobbying.

49 CFR part 24—Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.

(c) *Executive orders.*

Executive Order 11988, Floodplain Management (May 24, 1977)(3 CFR, 1977 Comp., p. 117).

Executive Order 11990, Protection of Wetlands (May 24, 1977)(3 CFR, 1977 Comp., p. 121).

Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (January 5, 1990)(3 CFR, 1990 Comp., p. 269).

(d) *Policies.*

(1) Design Policy and Guidelines (1996). Division of Engineering Services, National Institutes of Health (**Note:** To obtain copies of the policy, interested persons should contact the Division of Engineering Services, 9000 Rockville Pike, Building 13, Room 2E43, Bethesda, MD 20892 (telephone 301–496–6186; not a toll-free number) or visit the following site on the World Wide Web (http://des.od.nih/gov/nihpol.html).).

(2) NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research (1994) (**Note:** To obtain copies of the policy, interested persons should contact the Office of Research on

Women's Health, NIH, Room 201, Building 1, MSC 0161, Bethesda, MD 20892–0161 (telephone 301–402–1770; not a toll-free number).).

(3) NIH Guidelines for Research Involving Recombinant DNA Molecules (1994) (**Note:** To obtain copies of the policy, interested persons should contact the Office of Recombinant DNA Activities, NIH, 6000 Executive Boulevard, Suite 323, MSC 7010, Bethesda, MD 20892–7010 (telephone 301–496–9838; not a toll-free number).).

(4) ''NIH Grants Policy Statement.'' NIH Pub. No. 99–80 (Oct. 1998) (Note: To obtain copies of the policy, interested persons should contact the Extramural Outreach and Information Resources Office (EOIRO), Office of Extramural Research, NIH, 6701 Rockledge Drive, Room 6208, MSC 7910, Bethesda, MD 20892–7910 (telephone 301–435–0714; not a toll-free number). Information may also be obtained by contacting the EOIRO via its e-mail address (asknih@odrockml.od.nih.gov) and by browsing the NIH Home Page site on the World Wide Web (http://www.nih.gov).).

(5) ''Guide for the Care and Use of Laboratory Animals (1996). Institute of Laboratory Animal Resources, Commission on Life Sciences, National Research Council (**Note:** To obtain copies of the policy, interested persons should contact the Office for Protection from Research Risks, NIH, 6100 Executive Boulevard, Suite 3B01, MSC 7507, Rockville, MD 20852–7507 (telephone 301–496–7005; not a toll-free number).).

(6) ''Public Health Service Policy on Humane Care and Use of Laboratory Animals.'' (Rev. Sept. 1986). Office for Protection from Research Risks, NIH (Note: To obtain copies of the policy, interested persons should contact the Office for Protection from Research Risks, NIH, 6100 Executive Boulevard, Suite 3B01, MSC 7507, Rockville, MD 20852–7507 (telephone 301–496–7005; not a toll-free number).).

(7) ''Biosafety in Microbiological and Biomedical Laboratories.'' DHHS Publication No. (CDC) 88–8395 (1993). Centers for Disease Control and Prevention (CDC) (**Note:** To obtain copies of the policy, interested persons should contact the Division of Safety, Occupational Safety and Health Branch, NIH, 13 South Drive, Room 3K04, MSC 5760, Bethesda, MD 20892–5760 (telephone 301–496–2960; not a toll-free number).).

(8) ''NIH Guidelines for the Laboratory Use of Chemical Carcinogens,'' DHHS Publication No. (NIH) 81–2385 (May 1981) (**Note:** To obtain copies of the policy, interested persons should contact the Division of Safety, Occupational Safety and Health Branch, NIH, 13 South Drive, Room 3K04, MSC 5760, Bethesda, MD 20892–5760 (telephone 301–496–2960; not a toll-free number).).

(9) ''NIH Policy and Guidelines on the Inclusion of Children as Participants in Research Involving Human Subjects (March 6, 1998).'' NIH Guide for Grants and Contracts (**Note:** To obtain copies of the policy, interested persons should contact the Office of Extramural Research, NIH, 6701 Rockledge Drive, Room 6208, MSC 7910, Bethesda, MD 20817–7910 (telephone 301–435–0714; not a toll-free number). Information may also be obtained by browsing the NIH Home Page site on the World Wide Web (http://www.nih.gov).).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 74 and 101

[MM Docket 97–217; FCC 99–178]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration.

SUMMARY: In this document, the Commission makes changes to the rules adopted in previous order which enabled licensees in the Multipoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS'') to engage in fixed two-way transmissions. These new rule changes further enhance the flexibility of MDS and ITFS operations by making certain technical modifications and by extending the streamlined application processing system to ITFS major modification applications.

DATES: Effective January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order on Reconsideration,* MM Docket, 97–217, adopted July 13, 1999 and released July 29, 1999. The full text of this *Reconsideration Order* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS''), Portals II, 445 12th Street, S.W. Room CY–B402, Washington, D.C. 20554.

Synopsis of Report ad Order on Reconsideration on MDS and ITFS Two-Way Transmissions

I. Introduction

1. This *Reconsideration Order* is adopted by the Commission after receiving petitions for reconsideration of its Order in this docket. *Two-Way Order,* 63 FR 65087 (November 25, 1998). The *Order* was issued following a notice of proposed rulemaking, which arose from a petition for rulemaking filed by a group of 111 educators and participants in the wireless cable industry (collectively, ''Petitioners''), comprised of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations. Traditionally, MDS and ITFS had been one-way video service providers. The Petitioners sought rule changes which would facilitate the provision of two-way digital service by these providers. The *Order* (1) permitted both MDS and ITFS licensees to provide two-way services on a regular basis; (2) permitted increased flexibility on permissible modulation types; (3) permitted increased flexibility in spectrum use and channelization, including combining multiple channels to accommodate wider bandwidths, dividing 6 MHz channels into smaller bandwidths, and channel swapping; (4) adopted a number of technical parameters to mitigate the potential for interference among service providers and to ensure interference protection to existing MDS and ITFS services; (5) simplified and streamlined the licensing process for stations used in cellularized systems; and (6) modified the ITFS programming requirements in a digital environment. The *Reconsideration Order* further modified some of the technical rules and extended the streamlined application processing system to all ITFS modification applications. These rule changes were designed to provide greater flexibility to operators in the design and operation of systems. We believe that the rule modifications we adopt in the *Reconsideration Order* will facilitate the most efficient use of the affected spectrum, enhance the competitiveness of the wireless cable industry, and provide benefits to the educational community through the use of two-way services, while still permitting traditional use of the spectrum, thus giving both MDS and ITFS licensees the flexibility they need to serve the public interest.

II. Procedural Changes to Rules

A. Application Processing Issues

2. In the *Order,* we adopted an application processing system that will substantially shift review of applications for new or modified response station hubs, boosters or downstream I Channel operations from Commission staff and leave much of the interference environment to be worked out by licensees. This system will now be extended to all ITFS modification applications. This system includes a one-day rolling filing window system. Each applicant will be required to