Subject: Final Grants Management Regulations for USDA Entitlement Programs

To: State Agency Directors -
   (Child Nutrition Programs)

Colorado ED, Colorado DPH, Iowa,
Kansas, Missouri DH, Missouri ED,
Montana PI, Montana DPHHS, Nebraska,
North Dakota, South Dakota, Utah ED,
Wyoming ED

On August 14, 2000, the Department issued final regulations (7 CFR Part 3016 and 7 CFR Part 3019) on grants management requirements for USDA Entitlement programs. These changes, which were proposed on February 17, 1998, bring the Department’s entitlement programs under the same regulations that already apply to nonentitlement programs and identify exceptions that only apply to entitlement programs. Attached is a copy of these regulatory changes and a memorandum with questions and answers explaining the effect of this rulemaking.

[Signature]
RAFAEL ZAMBRANO
Acting Regional Director
Child Nutrition Programs

Attachments: SP-01-01
Final Regulations on USDA Entitlement Programs
Questions and Answers

Attached is a Federal Register notice, published August 14, 2000, in which the Department issued final regulations on grants management requirements for USDA entitlement programs. These changes, which were proposed on February 17, 1998, bring the Department's entitlement programs under the same regulations that already apply to nonentitlement programs and identify exceptions that only apply to entitlement programs. The following text outlines the principal effects of these final rules.

What regulations are changed?

In 1988, the Department joined other Federal agencies in issuing a final grant management regulation at 7 CFR Part 3016 to implement the government wide Common Rule. This rulemaking applied to programs operated by State and local governments, excluding the Department's entitlement programs. On November 29, 1993, the Department codified OMB's revisions to Circular A-110 for institutions of higher education, hospitals, and other nonprofit organizations in Departmental regulation 7 CFR Part 3019. As with 7 CFR Part 3016, entitlement programs were also excluded from 7 CFR Part 3019.

Under these final regulations, a single set of rules will now apply to USDA entitlement and nonentitlement programs. Entitlement and nonentitlement programs operated by State and local governments are subject to 7 CFR Part 3016, while 7 CFR Part 3019 applies to institutions of higher education, hospitals and other nonprofit organizations.

What entitlement programs are affected?

The USDA entitlement programs are identified at 7 CFR sections 3016.4(b) and 3019.1(b)(1), respectively. They include: the Food Stamp Program, the Child Nutrition Programs (including related commodities), and the Food Distribution Program on Indian Reservations (FDPIR).

What is the final rule's effective date?

The preamble states that "implementation shall be phased in by incorporating the provisions into awards made after the start of the next Federal entitlement program year." This means the final rule takes effect on October 1, 2000, except for public and nonpublic school food authorities operating the school nutrition programs. Because the school nutrition programs operate according to a school year cycle, State administering agencies may permit these program operators to delay implementation until the beginning of the next school year (July 1, 2001).

How will the final rule affect USDA entitlement programs?

The final rule does two things. As noted above, it brings the entitlement programs under the same grants management rules that already applied to non-entitlement programs. In addition, it establishes certain exceptions to the general rules that apply solely to entitlement programs. These exceptions are set out in Subpart E to Part 3016. They are:


   Section 3016.61 excludes entitlement programs, other than the FDPIR, operated by State and local governments from the general financial
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Attachments
We cannot discuss every nuance between the old and new rules in a document this size, but believe entitlement program grantees and subgrantees should be made aware of the final rule's treatment of small purchase thresholds. As you know, formal advertising requirements applied to procurements of $10,000 or more under the old rules.

Sections 3016.36(b) and Section 3019.44(e)(2) set the small purchase threshold at the level established by 41 U.S.C. 403(11). The Federal Acquisition Streamlining Act of 1994 raised the small purchase threshold from $25,000 to $100,000. This increase is currently reflected in the text of Part 3016, but not Part 3019. Nonetheless, the small purchase threshold for all non-governmental, not-for-profit organizations operating USDA entitlement programs has been increased to $100,000.

However, since section 3016.36(b) instructs a governmental entity to use its own procurement rules to the extent they are not inconsistent with the Federal rules, the small purchase threshold actually available to a governmental program operator is the lower of $100,000 or the threshold set by State or local laws and regulations. We are not aware of any State or local laws or regulations that currently set a threshold as high as $100,000. Therefore, we anticipate that governmental program operators will be unable to fully realize the benefits of this change until their governing bodies take action to raise their respective thresholds.

What is the status of 7 CFR Part 3015 now that the final rule is published?

The final rule eliminated USDA entitlement programs operated by State and local governments and not-for-profit organizations from the scope of Part 3015. However, Part 3015 still contains some departmental policies applicable to all USDA programs. For example, Subpart T (Cost Principles) gives departmental guidance on implementing the Federal cost principles; and Subpart U (Miscellaneous) sets out policies on such subjects as the use of consultants and the acknowledgment of USDA support on publications and audiovisuals produced under USDA awards.
reporting rules at 7 CFR section 3016.41. Instead, these grantees will continue to follow the financial reporting requirements contained in their respective program regulations. For example, State agencies administering the National School Lunch Program will follow financial reporting requirements at 7 CFR Part 210.

2. Procurement Standards.

a. 7 CFR section 3016.60(a) gives States conducting procurements under USDA entitlement programs the option to follow either State procurement rules or the Federal rules at 7 CFR sections 3016.36(b) through (i).

Regardless of the option chosen, States must also comply with the additional exceptions at §§3016.60(b) and (c). These exceptions also apply to local governments conducting procurements under USDA entitlement programs.

b. Section 3016.60(b) excludes any person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions, or other documents for use by a grantee or subgrantee in conducting a procurement under USDA entitlement programs from competing for contract awards resulting from that procurement, regardless of the procurement method used. This provision generated considerable controversy during the development of the final rule. Accordingly, the preamble gives extensive guidance on how program operators should apply it.

c. Section 3016.60(c) prohibits the use of statutorily or administratively imposed in-State or local geographical preferences, except when procuring certain architectural or engineering services.

In addition to the exceptions identified at §§3016.60(b) and (c), where can local governments find the procurement rules that apply to the USDA entitlement program they operate?

All local governments operating USDA entitlement programs must follow 7 CFR Part 3016.36(b)-(i). Local governments include county and municipal agencies, public schools, districts, public residential institutions, public Summer Food Service Program sponsors, etc. Since most local governments already have a set of procurement requirements in place, §3016.36(b)(1) instructs a local government to use its own State or local procurement procedures as long as those procedures conform to applicable Federal law and the requirements of §§3016.36(b) through (i). If these procurement rules do not conform to Federal requirements, the local government must follow §§3016.36(b)(2)-(i). In all cases, local governments must also follow the provisions of §§ 3016.60(b) and (c).

Where are the procurement rules for nonprofit organizations operating USDA entitlement programs found?

Non-governmental, not-for-profit organizations, including public and private universities, public and private hospitals, community action agencies, private schools, private residential institutions, and other charitable organizations follow 7 CFR Part 3019. The procurement methods and practices used by organizations subject to Part 3019 must not be inconsistent with §§3019.40-48.

How do the new procurement rules differ from the old ones?