**Section 360.APPENDIX D Procedures for Determination of Indirect Costs and Indirect Cost Rates**

1. Definition:

Indirect costs are those costs incurred for a common or joint purpose but benefiting more than one cost objective, and not readily identifiable to the cost objectives specifically benefited. The term indirect cost, as used herein, applies to costs of this type occurring in the grantee department (or other relevant organizational unit responsible for project performance), as well as those central service support costs incurred by other departments in supplying goods, services, and facilities to the grantee department when such cost can be assigned to the departmental indirect cost pool as a result of an approved cost allocation plan.

2. General:

(A) Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement incorporated in the grant agreement. Indirect cost rates and indirect costs as determined below shall be used in the grant agreement but shall be considered to be estimates; the final amount of eligible indirect costs will be based on audited actual costs.

(B) Indirect cost rates are not retroactive and may not be changed during the period of the grant agreement.

(C) No indirect costs are allowable for reimbursement grants.

(D) The grantee must secure approval of the Agency of its proposed indirect cost rate in advance of its acceptance of a Step 3 grant.

3. Grantees with Existing USEPA Construction Grants:

(A) If the grantee has a current grant from the U.S. Environmental Protection Agency (USEPA) for construction of a sewage treatment works, the most recently established indirect cost rate in that grant will be used by the Agency, provided that:

(1) the rate was approved by the lead federal agency; and

(2) procedures established in Federal Management Circulars 73-6 and 74-4 were followed in determining the rate; and

(3) the indirect cost rate in the USEPA grant was negotiated in accordance with the requirements of 40 CFR 30.715-2.

(B) If the grantee has a current grant from USEPA for the construction of treatment works which shows a zero indirect cost rate or which specifies that there is not indirect cost rate, it is not eligible to establish an indirect cost rate for a state grant.

(C) If the grantee is claiming prior cost involving force account work, the indirect cost associated with such work may be computed from an applicable USEPA construction grant made to the same grantee and in effect during the period of time in which the force account work was incurred.

(D) To establish an indirect cost rate under this section, the Agency will require:

(1) copies of all executed grants currently in effect between the grantee and USEPA, certified by the clerk or other appropriate official of the grantee;

(2) a letter from an appropriate official of the grantee, authorizing representatives of the Agency to have access to the federal audit which served as the basis of the indirect cost rate in the USEPA grants.

(E) If the grantee has more than one currently effective USEPA construction grant with differing indirect cost rates, the Agency will determine which of the federally approved indirect cost rates is most appropriate for use on the state grant project.

4. Grantee without Existing USEPA Construction Grants:

 For grantees which do not have existing current USEPA construction grants, either of the following procedures may be used to establish an indirect cost rate:

(A) A negotiated lump sum for overhead may be established, based on the grantee's submission of evidence of estimated charges to be incurred. The provisions of 40 CFR 30.715-2(b) will be used as guidance in establishing such a lump sum. Lump sum indirect costs negotiated under this provision may not exceed one percent of the total project cost.

(B) A negotiated indirect cost rate may be established, in the manner described in 40 CFR 30.715-2(a), in accordance with either of the following procedures:

(1) For projects whose total estimated project cost is less than $10 million, the grantee shall follow the Agency's criteria for use in determining eligibility of specific items used in establishing an indirect cost rate, submit the completed indirect cost rate determination to the Agency with substantiation, and provide a certification from an appropriate official of the grantee that the information submitted is, to the best of its knowledge, true and accurate. Under this section, total indirect costs may not exceed five percent of the total estimated project cost.

(2) For projects with a total project cost of more than $10 million, the grantee may propose an indirect cost rate, with substantiation and justification, to the Agency. The Agency will review the submitted information in accordance with guidance provided by Federal Management Circulars 74-4 and 73-6 and procedures described in 40 CFR 30-715-2(a).

5. Disputes:

 The grantee will be notified of Agency approval or disapproval of a proposed indirect cost rate. If the Agency disapproves the proposed rate, its reasons for disapproval shall be stated, together with a more appropriate method of determination. If the grantee does not accept the Agency's determination of a more appropriate method, it may contest it pursuant to the provisions of General Condition 9, Disputes, of these general conditions.