

§ 3406.28

Governmentwide Requirements for Drug-Free Workplace (Grants), implementing Executive Order 12549 on debarment and suspension and the Drug-Free Workplace Act of 1988 (41 U.S.C. 701).

7 CFR Part 3018—Restrictions on Lobbying, prohibiting the use of appropriated funds to influence Congress or a Federal agency in connection with the making of any Federal grant and other Federal contracting and financial transactions.

7 CFR Part 3019—USDA implementation of OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3051—Audits of Institutions of Higher Education and other Nonprofit Institutions.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15b (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3406.28 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3406.29 Evaluation of program.

Grantees should be aware that NIFA may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities. Thus,

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grantees should be prepared to cooperate with NIFA personnel, or persons retained by NIFA, evaluating the institutional context and the impact of any supported project. Grantees may be asked to provide general information on any students and faculty supported, in whole or in part, by a grant awarded under this program; information that may be requested includes, but is not limited to, standardized academic achievement test scores, grade point average, academic standing, career patterns, age, race/ethnicity, gender, citizenship, and disability.

PART 3407—IMPLEMENTATION OF NATIONAL ENVIRONMENTAL POLICY ACT

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AUTHORITY: National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*; E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; E.O. 12144, 44 FR 11957; 5 U.S.C. 301; 40 CFR parts 1500-1508; and 7 CFR part 1b.

SOURCE: 56 FR 49245, Sept. 27, 1991, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3407 appear at 76 FR 4810, Jan. 27, 2011.

§ 3407.1 Background and purpose.

(a) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the human environment. Section 102(2) of NEPA directs all Federal agencies to give appropriate consideration to the environmental consequences of proposed actions in their decisionmaking and to prepare detailed environmental statements on major Federal actions

significantly affecting the quality of the human environment.

(b) The purpose of this regulation is to supplement the regulations for implementation of NEPA established by the Council on Environmental Quality (CEQ) and codified at 40 CFR parts 1500–1508, as adopted by USDA in 7 CFR part 1b.

(c) Unless otherwise noted, parenthetical citations throughout this part refer to the CEQ regulations.

§ 3407.2 Definitions.

(a) *Authorized Departmental Officer* means the NIFA official, acting within the scope of delegated authority, who is responsible for awarding and administering project grants on behalf of USDA and for carrying out NEPA responsibilities as outlined in § 3407.4(d) of this part. The Authorized Departmental Officer's responsibilities do not include the review, approval, management, or similar activity relating to programs or projects funded by NIFA on the basis of statutory formula and also do not include parallel responsibilities relating to the management or administration of cooperative agreements awarded by NIFA.

(b) Other terms used in this regulation have the same meaning as they have in the CEQ regulations.

§ 3407.3 Policy.

(a) It is NIFA policy to comply with the provisions of NEPA and related laws and policies and with the implementing regulations cited in § 3407.1(b) of this part.

(b) Environmental documents should be concise, written in plain language, and address the issues pertinent to the decision being made.

(c) Environmental documents may be substituted for or combined with other reports which serve to facilitate decisionmaking (40 CFR 1506.4).

(d) NIFA personnel will cooperate with other Federal and State agencies or units thereof, as well as with grantees, contractors, and other cooperating individuals or entities undertaking activities funded or recommended for funding by NIFA to assure that NEPA considerations are addressed early in the planning process to avoid delays and conflicts (40 CFR 1501.2).

(e) NIFA reserves the right to require project participants outside of NIFA to furnish environmental data or documentation to assist NIFA in carrying out its responsibilities under NEPA. When an applicant, grantee, or other cooperating individual or organization is required to submit environmental data to NIFA, including preparation of an environmental assessment (EA), or when a contractor hired by a grantee or other cooperating party prepares environmental data or documentation, NIFA shall provide advance instructions to the applicant, grantee, or other cooperator relating to the preparation and submission of the required information. All information supplied by external project participants shall be subject to verification by NIFA (40 CFR 1506.5).

(f) When possible, costs of analyses and development of required environmental documents shall be planned for during the budgetary process relating to the plan or program. Where the nature of particular program agreements (e.g., grants, cooperative agreements, formula projects) are determined by NIFA to require environmental documentation, the cost of preparing such documentation and of reasonable mitigation efforts shall be considered allowable costs and may be charged to the project as a portion of the Federal or the non-Federal share of project costs. However, NIFA funds above those authorized for the program award will not be made available to recipients to cover such costs.

(g) Final environmental documents, decision notices, and records of decision shall be available to the public for review. There shall be an early and open process for determining the scope of issues to be addressed during environmental analysis (40 CFR 1501.7).

(h) The concept of tiering to eliminate repetitive discussions applicable to EISs (40 CFR part 1502) is applicable to EAs also.

(i) NIFA officials may adopt an existing Federal EA or EIS when a proposed action is substantially the same as the action for which an existing EA or EIS was prepared (40 CFR 1506.3), provided that the EA or EIS or portion thereof meets the standards for an adequate EA or EIS under these regulations.

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(j) Existing environmental documents may be incorporated by reference to reduce the bulk of an EA or EIS (40 CFR 1502.21).

(k) After prior consultation with the Council on Environmental Quality, NIFA personnel may, in emergency situations, implement alternative arrangements for compliance with these procedures in accordance with 40 CFR 1506.11.

§ 3407.4 Responsibilities.

The NIFA officials identified below are responsible for carrying out the provisions of NEPA as indicated:

(a) . The is responsible for providing leadership, formulating agency policies and procedures to implement NEPA, and making available necessary resources to ensure that NEPA goals are met.

(b) *Deputy Directors and Assistant Directors.* Deputy Directors and Assistant Directors are responsible for:

(1) Ensuring that eligible institutions under NIFA formula grant programs are notified of agency environmental requirements before projects to be funded with formula funds are submitted to NIFA for approval;

(2) Assuring that adequate consideration is given to environmental effects of proposed actions during programmatic planning and decision-making processes for grants, cooperative agreements, and formula projects;

(3) Ensuring that environmental information is reviewed and that required documentation is developed in a timely and satisfactory manner for grants, cooperative agreements, and formula projects; and

(4) Approving courses of action within the range of alternatives presented including, as appropriate, approval or recommendation of EAs and EISs for grants, cooperative agreements, and formula projects.

(c) *Program Managers.* NIFA Program Managers are responsible for:

(1) Preparing EISs when required;

(2) Reviewing and making recommendations relating to environmental documentation submitted by project recipients;

(3) Recommending and implementing courses of action within the range of alternatives presented; and

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(4) Monitoring results.

(d) *Authorized Departmental Officer.* The Authorized Departmental Officer is responsible for:

(1) Ensuring that eligible applicants under NIFA's project grant programs are notified of agency environmental requirements in advance of proposal preparation;

(2) Providing terms and conditions of grant award for adequate environmental documentation; and

(3) Authorizing the commencement of approved project activities.

NOTE: Where agency environmental requirements are set forth in program regulations, solicitations of applications, program guidelines, or other documents that apprise applicants of environmental requirements, the requirement for advance notification to potential applicants shall be satisfied.

§ 3407.5 Classes of action.

The following describes typical classes of action associated with NIFA programs and related activities:

(a) Actions which normally do not require the preparation of an EA or an EIS are those actions which ordinarily do not have significant individual or cumulative effect on the quality of the human environment. These include those activities described in §§ 3407.6 (a)(1) and (a)(2) of this part.

(b) Actions normally requiring an EA, but not necessarily an EIS, are those projects in which at least some level of uncertainty exists regarding individual or cumulative effects on the quality of the human environment. Such actions generally include those identified in §§ 3407.6(b) and 3407.7 of this part.

(c) Actions normally requiring an EIS are projects which are determined to have a significant impact on the quality of the human environment or which will be performed under extraordinary circumstances. These types of actions are identified in §§ 3407.6(b) and 3407.8 of this part.

§ 3407.6 Categorical exclusions.

(a) All NIFA actions will be analyzed by the appropriate NIFA official specified in § 3407.4(c) to determine whether the project under consideration will have a significant environmental effect prior to recommending to the official responsible for approving a formula

project in the case of formula grants, or the official responsible for awarding a grant or cooperative agreement in the case of a grant or cooperative agreement that the action be undertaken. Unless otherwise determined to be necessary under the provisions of paragraph (b) of this section, however, the preparation of an EA or EIS is not required for the following categories of actions:

(1) *Department of Agriculture Categorical Exclusions (7 CFR 1b.3)*. (i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursement, and transfer or reprogramming of funds;

(iii) Inventories, research activities and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) *NIFA categorical exclusions* Based on previous experience, the following categories of NIFA actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

(b) Exceptions to categorical exclusions. Notwithstanding paragraph (a) of this section, an EA or EIS shall be prepared for an activity which is normally within the purview of categorical exclusion where it is determined by NIFA that substantial controversy on environmental grounds exists or that other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

§ 3407.7 Actions normally requiring an environmental assessment.

The following actions normally will require an EA:

(a) Programs supported in whole or in part by NIFA which may result in a particular technology's moving from the field evaluation stage to large-scale demonstration or simulated commercial phase.

(b) Field work that is expected to have an effect on the human environment such as large-scale excavations or the use of explosives.

(c) Projects for the construction or renovation of physical facilities, unless categorically excluded under § 3407.6(a)(2)(ii).

(d) Activities specified in § 3407.6(b).

§ 3407.8 Actions normally requiring an environmental impact statement.

An EIS normally will be required for major actions where it is determined by NIFA that such activity will significantly affect the quality of the human environment, including those specified in § 3407.6(b).

§ 3407.9 Use of environmental documents in decisionmaking.

In carrying out agency responsibilities under NEPA, NIFA officials shall:

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(a) Consider all relevant environmental documents in evaluating programs, proposals, or projects for final agency action.

(b) Make all relevant final environmental documents, comments, and responses part of the record in rule-making and adjudicatory proceedings.

(c) Ensure that all relevant final environmental documents, comments, and responses are submitted to NIFA in a timely fashion, are subjected to normal agency review processes, and are made a part of the official record.

(d) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating plans, programs, or proposals for agency action.

§ 3407.10 Preparation of environmental assessments.

(a) *Format and content.* An EA may be prepared in any format provided that it covers, in a logical and succinct fashion, the information necessary for determining whether a proposed NIFA action may have a significant environmental impact and thus warrant preparation of an EIS. The information must include brief discussions on the need for the project, alternatives to the proposed action, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted (40 CFR 1508.9). Where possible, EAs should be limited to 10–15 pages. NOTE: It is the scope and complexity of the environmental issues, rather than the size of the project, that should be used to determine the length of the EA

(b) *Supplements to environmental assessments.* Where substantial changes occur in a project or activity for which an EA has been prepared and it is determined by a responsible NIFA official specified in § 3407.4(b) that the changes are pertinent to environmental concerns, a supplement to the EA may be required. Supplements to EAs shall be evaluated and processed as stated in paragraph (c) of this section.

(c) *Decision notice.* Upon completion of an EA and any supplement thereto, the responsible NIFA official will evaluate the information it contains, determine whether an EIS is required

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or whether no significant environmental impact is likely to occur, and will document the decision and the reasons upon which it is based (40 CFR 1508.13). The EA shall be available to the public.

§ 3407.11 Preparation of environmental impact statements.

(a) *Actions involving more than one agency.* If more than one Federal agency participates in a program activity, a lead agency shall be selected in accordance with 40 CFR 1501.5(c). The lead agency, in full cooperation with all participating agencies, shall assume responsibility for involving the public as required in 40 CFR 1501.4(b) and shall prepare the EIS or shall cause the EIS to be prepared as provided in 40 CFR 1501.5.

(b) *Notice of intent.* If a responsible NIFA official designated in § 3407.4(b) of this part recommends the preparation of an EIS, the public shall be apprised of the decision. This notice shall be prepared according to 40 CFR 1508.2.

(c) *Draft and Final EIS.* The process of preparing the draft and final EIS, as well as the format of the document, shall comply with the provisions of 40 CFR parts 1502–1506.

(d) *Supplemental statements.* Where substantial changes occur or new information becomes available under a project or activity for which an EIS or draft EIS has been prepared and it is determined by a responsible NIFA official specified in § 3407.4(b) that the changes are pertinent to environmental concerns, a supplement to the EIS or draft EIS may be required. The supplement shall be evaluated and processed in accordance with 40 CFR 1502.9(c).

(e) *Decisionmaking and implementation.* A responsible NIFA official designated in § 3407.4(b) may make a decision no sooner than thirty days after the notice of availability of the final EIS has been published in the FEDERAL REGISTER by the Environmental Protection Agency (40 CFR 1506.10). The decision will be documented in a record of decision as required by 40 CFR 1505.2, and monitoring and mitigation activities will be implemented as required by 40 CFR 1505.3.