

3. Property requirements.

a. *Federally owned property.* If the subrecipient will be accountable for federally owned property, you must include the property management system, use, and disposition requirements described in Sections C and F of SUB Article V that are applicable to federally owned property.

b. *Intangible property.* You must include the applicable intangible property requirements described in Section G of SUB Article V.

4. *Reporting requirements.* You must include requirements for reporting that you need in order to meet your responsibilities under this award for reporting to us.

5. Other administrative requirements.

a. *Integrity-related information.* You must include the substance of the provision in Section C of OAR Article I in any subaward you make under this award. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

b. Records retention and access.

i. You must include the requirements for records retention and access in paragraph A.3 and Sections B and F of OAR Article II, as applicable, if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe. You may not impose any other records retention or access requirements on the subrecipient.

ii. You must include the corresponding requirements of 32 CFR 34.42 if the subaward is to a for-profit entity.

c. *Remedies and termination.* You must include:

i. The requirements concerning remedies and termination that are described in paragraphs D.1 and 2 of SUB Article VIII;

ii. Provisions addressing any hearing and appeal rights the subrecipient has, as described in Section E of SUB Article VIII; and

iii. Terms and conditions addressing adjustment of the amount of the subaward if it is terminated before the subrecipient accomplishes all of the specified outcomes.

d. *Continuing responsibilities.* You must include requirements concerning continuing responsibilities for audits and records retention and access that are described in paragraphs B.1 and 3 of OAR Article VII.

e. *Collection of amounts due.* You should consider including requirements concerning collection of amounts due, as described in Section F of SUB Article VIII.

Section E. National policy requirements for fixed-amount subawards. You must include in the terms and conditions of each fixed-amount subaward the national policy requirements that SUB Article IX of this award specifies, as applicable.

Section F. Subrecipient monitoring and other post-award administration. You must carry out the subrecipient monitoring and post-award administration actions specified in SUB Article X, as applicable.

Section G. Fixed-amount subawards at lower tiers.

1. Authority.

a. If Section B of this article authorizes you to use a fixed-amount type of subaward without our prior approval in some

situations, a cost-type subaward that you make may authorize the subrecipient to use fixed-amount subawards at the next lower tier in those same situations without our prior approval.

b. If you wish to allow a subrecipient of a cost-type subaward to use fixed-amount subawards at the next tier in other situations (*i.e.*, situations in which this article requires you to obtain our prior approval before using a fixed-amount type of subaward), your subaward terms and conditions must require the subrecipient to submit a request through you to obtain our prior approval for use of that type of subaward.

2. *Subaward requirements.* If your subrecipient is authorized to use lower-tier fixed-amount subawards, as described in paragraphs 1.a and b of this section, your subaward's terms and conditions must:

a. Require the subrecipient, before it makes any lower-tier fixed-amount subaward, to:

i. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that SUB Article I of this award requires you to make for your subawards.

ii. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

b. Include the requirements specified in Sections A through F of this article.

Dated: July 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020-16414 Filed 8-18-20; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

2 CFR Part 1122

[DOD-2016-OS-0053]

RIN 0790-AJ48

National Policy Requirements: General Award Terms and Conditions

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This rule is the fourth of a sequence of six final rules published in this issue of the **Federal Register**. This final rule adds a new Department of Defense Grant and Agreement Regulations (DoDGARs) part to establish a consistent way for DoD Components to organize the portion of their general terms and conditions covering national policy requirements, such as nondiscrimination, environmental protection, and live organisms. It also provides standard wording of terms and conditions for national policy requirements that apply generally to DoD programs and awards.

DATES: This rule is effective October 19, 2020.

FOR FURTHER INFORMATION CONTACT: Barbara Orlando, Basic Research Office, telephone 571-372-6413.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Final Rule

As explained in the Supplementary Information section of the first of the sequence of final rules in this section of this issue of the **Federal Register**, these six rules collectively make a major portion of needed updates to the Department of Defense Grant and Agreement Regulations (DoDGARs). The purpose of this rule, the fourth of the sequence, is to maximize uniformity of general terms and conditions addressing national policy requirements within DoD grants and cooperative agreements.

As described in the second of the six final rules, 2 CFR part 1120 of the DoDGARs establishes a standard award format for DoD Components' grants and cooperative agreements. National policy requirements are one of the four sub elements of an award's general terms and conditions. This added part—2 CFR part 1122—provides (1) a standard organization for the general terms and conditions addressing national policy requirements, and (2) standard wording of terms and conditions for the national policy requirements that commonly apply to DoD Components' grants and cooperative agreements.

It should be noted that 2 CFR part 1122 applies to grants and cooperative agreements awarded to all types of recipient entities. That scope distinguishes part 1122 from the other final rules in 2 CFR parts 1126 through 1138 published in the **Federal Register**, which address requirements only for Department of Defense (DoD) grants and cooperative agreements awarded to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

B. Revisions Implemented by This Rule

This rule supersedes the Appendix of 32 CFR part 21, moving it to 2 CFR part 1122. It provides an updated version of the National Policies that apply to all DoD financial assistance awards.

C. Legal Authorities for the Regulatory Action

There are two statutory authorities for this final rule:

- 10 U.S.C. 113, which establishes the Secretary of Defense as the head of the Department of Defense; and
- 5 U.S.C. 301, which authorizes the head of an Executive department to

prescribe regulations for the governance of that department and the performance of its business.

II. Regulatory History

In December 2014 (79 FR 76047), DoD established an interim implementation of the final guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” published by the Office of Management and Budget (OMB) on December 26, 2013, in 2 CFR part 200 (Uniform Guidance—available at 78 FR 78589). DoD then published a Notice of Proposed Rulemaking (November 7, 2016 (81 FR 78376)) that proposed to part title 2 part 1122 to provide standard wording of terms and conditions for national policy requirements that apply generally to DoD programs and awards.

III. Comments and Responses

DoD received one public comment on the Notice of Proposed Rulemaking (NPRM) for 2 CFR part 1122, published on November 7, 2016. That comment was from a nonprofit organization representing groundwater professionals.

Comment: The commenter pointed out that paragraph A.4.f of National Policy Article II (appendix B to 2 CFR part 1122), Environmental national policy requirements addressed only underground sources of drinking water that are designated as the sole or principal drinking water source (*i.e.*, a “sole-source aquifer”), thereby understating the need for protection of groundwater sources of drinking water and not fully reflecting the provisions of the Safe Drinking Water Act (SDWA). The commenter pointed out that the SDWA (1) also has provisions followed by States and public water systems to designate “wellhead protection areas” around and supplying groundwater to public water system wells (42 U.S.C. 300h–7, also cited as SDWA Section 1428); and (2) requires States and communities to delineate the areas to be protected from contamination around public water supply wells and to have a program to manage potential sources of contamination to minimize their threat to underground drinking water sources supplying communities’ wells.

Response: DOD agreed with the comment and amended the requirement by adding the wording “. . . and in wellhead protection areas . . .” to the specified paragraph after the words “Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source . . .”

DoD made one other substantive change to this part as follows:

In National Policy (NP) Article IV, A.7 (appendix D to 2 CFR part 1122), we added clarifying language to indicate that “Fly America” requirements apply to transport of persons, as well as personal effects. This change was deemed necessary because the language of the NPRM dealt only with air travel of property. We also added language to refer to both the statute and its implementing regulations. A comparable change was made in the third of the final rules published in today’s **Federal Register**. The change was made in Appendix C to 2 CFR part 1132, specifically in Procurement (PROC) Article III, “Contract provisions for recipient procurements,” Section B.10.

In addition, we made an editorial change for clarity and consistency with other of the final rules published in today’s **Federal Register**. In several places, where the word “agreement” was used generically (rather than in the term “cooperative agreement”), we changed it to “award.”

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as a “not significant” regulatory action, and not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive Orders.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations

be prudently managed and controlled through a budgeting process.” This rule is not subject to the requirements of this Executive Order because it is not significant under Executive Order 12866.

Costs

DoD has found that this rule will not impose costs on the public, as there are not any costs associated with standardizing general terms and conditions addressing national policy requirements.

Benefits

DoD determined that providing a central location and standard language within the DoDGARs for the terms and conditions of the most commonly applicable national policy requirements will help maximize long-term benefits in relation to costs and burdens for recipients of DoD grants and cooperative agreements.

The principal benefits of this regulatory action are that recipients and others who use the content of awards from multiple DoD Component awarding offices should:

- Be able to find what they need within different offices’ awards more quickly and easily due to the standard organization for general terms and conditions covering national policy requirements.
- Spend less time evaluating terms and conditions, because the standard wording for commonly applicable national policy requirements will obviate the need to interpret different wording various offices’ awards include for the same requirement.

Alternatives

1. No action—If no action was taken DoD would not be compliance with OMB requirements to move all financial assistance regulations to 2 CFR.

2. Next Best alternative—The next best alternative would be to add additional terms, beyond those found in the DoDGARs, which give background explanations for the terms that are in the DoDGARs. While the new terms may add additional context to the terms in the DoDGARs, it would be more beneficial to expand the definition of the term than to direct the public to additional terms.

B. Congressional Review Act (5 U.S.C. 801, *et seq.*)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100

million or more or have certain other impacts. This rule is not a major rule under the Congressional Review Act.

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will not impose any impacts on any entities. This means that there will be no economic impacts on any entities. Therefore, the Department of Defense under 5 U.S.C. 601 *et seq.* certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any 1 year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Collection of Information

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520) applies to collections of information using identical questions posed to, or reporting or recordkeeping requirements imposed on, ten or more members of the public. This rule does not call for a new collection of information under the PRA.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule does not have federalism implications that warrant the preparation of a federalism assessment in accordance with Executive Order 13132.

List of Subjects in 2 CFR Part 1122

Business and industry, Colleges and universities, Cooperative agreements, Grants administration, Hospitals, Human research subjects, Indians, Nonprofit organizations, Research misconduct, Small business, State and local governments.

■ Accordingly, 2 CFR chapter XI is amended by adding part 1122 to read as follows:

PART 1122—NATIONAL POLICY REQUIREMENTS: GENERAL AWARD TERMS AND CONDITIONS

Sec.

A—General

- 1122.1 Purpose of this part.
- 1122.2 Definition of “national policy requirement.”
- 1122.3 Definitions of other terms as they are used in this part.

Subpart B—Terms and Conditions

- 1122.100 Purpose of this subpart.
- 1122.105 Where to find the terms and conditions.
- 1122.110 Organization of each article of national policy requirements.
- 1122.115 Cross-cutting national policy requirements.
- 1122.120 Other national policy requirements.
- Appendix A Terms and condition for NP Article I, “Nondiscrimination National Policy Requirements.”
- Appendix B Terms and condition for NP Article II, “Environmental National Policy Requirements.”
- Appendix C Terms and conditions for NP Article III, “National Policy Requirements Concerning Live Organisms.”

Appendix D Terms and conditions for NP Article IV, “Other National Policy Requirements.”

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A—General

§ 1122.1 Purpose of this part.

(a) This part specifies a standard format and standard wording of general terms and conditions for Subdivision B of the general terms and conditions of DoD grants and cooperative agreements, which concerns national policy requirements.

(b) It thereby implements:

(1) Office of Management and Budget (OMB) guidance in 2 CFR 200.210(b)(ii) and 200.300, as those paragraphs of 2 CFR part 200 relate to national policy requirements for general terms and conditions of DoD grants and cooperative agreements to institutions of higher education and other nonprofit organizations, States, local governments, and Indian tribes.

(2) National policy requirements, to the extent they apply, for general terms and conditions of DoD awards to for-profit firms, foreign organizations, and foreign public entities.

§ 1122.2 Definition of “national policy requirement.”

For the purposes of this chapter, a national policy requirement is a requirement:

- (a) That is prescribed by a statute, Executive order, policy guidance issued by the Executive Office of the President, or regulation that specifically refers to grants, cooperative agreements, or financial assistance in general;
- (b) With which a recipient of a grant or cooperative agreement must comply during the period of performance; and
- (c) That is outside subject matter areas covered by administrative requirements in subchapters D or E of this chapter.

§ 1122.3 Definition of other terms as they are used in this part.

Because the meaning of some terms used in this part derive from their definitions in the statutes, Executive orders, or other sources of national policy requirements that this part implements, the meanings of those terms may vary from their meanings in other parts of the DoD Grant and Agreement Regulations. For example, some statutes define “State” in ways that differ from each other and from the definition provided in 2 CFR part B. In each case, the definition in the source of the pertinent national policy requirement takes precedence over the definition in 2 CFR part B for the purposes of complying with that requirement.

Subpart B—Terms and Conditions

§ 1122.100 Purpose of this subpart.

This subpart provides:
 (a) Direction to DoD Components on how to construct the four articles of national policy requirements for inclusion in the general terms and conditions of grants and cooperative agreements.

(b) Standard wording for national policy requirements that are more commonly applicable to DoD Components' grants and cooperative agreements.

§ 1122.105 Where to find the terms and conditions.

(a) Appendices A through D of this part provide standard wording of terms

and conditions for the four articles of national policy requirements. The articles address the rights and responsibilities of the Government and the recipient related to those national policy requirements.

(b) The following table shows which national policy terms and conditions may be found in each appendix to this part:

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award with-in NP Article . . .
Appendix A	Non-discrimination national policy requirements	I.
Appendix B	Environmental national policy requirements	II.
Appendix C	National policy requirements concerning live organisms	III.
Appendix D	Other national policy requirements	IV.

§ 1122.110 Organization of each article of national policy requirements.

Each of NP Articles I through IV includes two sections.

(a) Section A of each article includes national policy requirements that are cross-cutting in that their applicability extends to many or all DoD awards. Appendices A through D to this part provide standard wording for each of those requirements.

(b) Section B of each article is the location in the award for program-specific national policy requirements. Section B is reserved in the standard wording of the articles provided in appendices A through D to this part.

§ 1122.115 Cross-cutting national policy requirements.

(a) *General requirement to include applicable cross-cutting requirements.* A DoD Component's general terms and conditions must include the standard wording provided in appendices A through D to this part for each national policy requirement addressed in Section A of NP Articles I, II, III, and IV, respectively, that may apply either to:

- (1) A recipient of an award using those general terms and conditions; or
- (2) A subrecipient of a subaward under an award using those general terms and conditions.

(b) *Authority to reserve or omit inapplicable paragraphs.* A DoD Component may reserve or omit any paragraph appendices A through D to this part provide for Section A of NP Articles I, II, III, and IV of its general terms and conditions if it determines that the national policy requirement addressed in that paragraph will not apply to any awards using those terms and conditions nor to any subawards under them.

(c) *Authority to use alternate wording.* (1) A DoD Component may use different wording for a national policy requirement than is provided in

appendices A through D to this part if it is authorized or required to do so by a statute or a regulation published in the Code of Federal Regulations after opportunity for public comment.

(2) A DoD Component in that case:
 (i) Must include the wording required by the statute or regulation in Section B of the appropriate article. This will help a recipient recognize the wording as a variation of the usual DoD wording for the requirement.

(ii) May either reserve the paragraph of Section A of the article in which that national policy requirement otherwise would appear or insert in that paragraph wording to refer the recipient to the paragraph in Section B of the article in which the requirement does appear.

§ 1122.120 Other national policy requirements.

If a DoD Component determines that awards using its general terms and conditions, or subawards under them, are subject to a national policy requirement that is not addressed in the standard wording appendices A through D to this part provide for cross-cutting requirements, the DoD Component must include the requirement in its general terms and conditions. It should add the requirement in Section B of NP Article I, II, III, or IV, as most appropriate to the subject matter of the requirement.

Appendix A to Part 1122—Terms and Conditions for NP Article I, “Nondiscrimination National Policy Requirements”

A DoD Component must use the following wording for NP Article I of its general terms and conditions in accordance with the provisions of Subpart B of this part.

NP Article I. Nondiscrimination national policy requirements. (December 2014)

Section A. Cross-cutting nondiscrimination requirements. By signing this award or accepting funds under this award, you assure that you will comply with applicable

provisions of the national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), as implemented by Department of Defense (DoD) regulations at 32 CFR part 195.

2. On the basis of gender, blindness, or visual impairment, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), as implemented by DoD regulations at 32 CFR part 196.

3. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

4. On the basis of disability, in the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

5. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) related to physically handicapped persons' ready access to, and use of, buildings and facilities for which Federal funds are used in design, construction, or alteration.

Section B. [Reserved]

Appendix B to Part 1122—Terms and Conditions for NP Article II, “Environmental National Policy Requirements”

A DoD Component must use the following wording for NP Article II of its general terms and conditions in accordance with the provisions of Subpart B of this part.

NP Article II. Environmental national policy requirements. (December 2014)

Section A. Cross-cutting environmental requirements. You must:

- 1. You must comply with all applicable Federal environmental laws and regulations. The laws and regulations identified in this section are not intended to be a complete list.
- 2. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, *et seq.*) and Clean Water Act (33 U.S.C. 1251, *et seq.*).
- 3. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), as implemented

by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in buildings owned by the Federal Government or housing receiving Federal assistance.

4. Immediately identify to us, as the Federal awarding agency, any potential impact that you find this award may have on:

a. The quality of the “human environment”, as defined in 40 CFR 1508.14, including wetlands; and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 *et seq.*), the regulations at 40 CFR 1500–1508, and E.O. 12114, if applicable; and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an environmental impact (*e.g.*, physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives to the proposed action until we provide written notification of Federal compliance with NEPA or E.O. 12114.

b. Flood-prone areas and provide any help we may need to comply with the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

c. A land or water use or natural resource of a coastal zone that is part of a federally approved State coastal zone management plan and provide any help we may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, *et seq.*) including preparation of a Federal agency Coastal Consistency Determination.

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes’ shores and provide help we may need to comply with the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source and in wellhead protection areas, and provide any help we may need to comply with the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

5. You must comply fully with the Endangered Species Act of 1973, as amended (ESA, at 16 U.S.C. 1531 *et seq.*), and implementing regulations of the Departments of the Interior (50 CFR parts 10–24) and Commerce (50 CFR parts 217–227). You also must provide any help we may need in complying with the consultation requirements of ESA section 7 (16 U.S.C. 1536) applicable to Federal agencies or any regulatory authorization we may need based on the award of this grant. This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

6. You must fully comply with the Marine Mammal Protection Act of 1972, as amended

(MMPA, at 16 U.S.C. 1361 *et seq.*) and provide any assistance we may need in obtaining any required MMPA permit based on an award of this grant.

Section B. [Reserved]

Appendix C to Part 1122—Terms and Conditions for NP Article III, “National Policy Requirements Concerning Live Organisms”

A DoD Component must use the following wording for NP Article III of its general terms and conditions in accordance with the provisions of Subpart B of this part.

NP Article III. National policy requirements concerning live organisms. (December 2014)

Section A. Cross-cutting requirements concerning live organisms.

1. Human subjects.

a. You must protect the rights and welfare of individuals who participate as human subjects in research under this award and comply with the requirements at 32 CFR part 219, DoD Instruction (DoDI) 3216.02, 10 U.S.C. 980, and when applicable, Food and Drug Administration (FDA) regulations.

b. You must not begin performance of research involving human subjects, also known as human subjects research (HSR), that is covered under 32 CFR part 219, or that meets exemption criteria under 32 CFR 219.101(b), until you receive a formal notification of approval from a DoD Human Research Protection Official (HRPO). Approval to perform HSR under this award is received after the HRPO has performed a review of your documentation of planned HSR activities and has officially furnished a concurrence with your determination as presented in the documentation.

c. In order for the HRPO to accomplish this concurrence review, you must provide sufficient documentation to enable his or her assessment as follows:

i. If the HSR meets an exemption criterion under 32 CFR 219.101(b), the documentation must include a citation of the exemption category under 32 CFR 219.101(b) and a rationale statement.

ii. If your activity is determined as “non-exempt research involving human subjects”, the documentation must include:

(A) Assurance of Compliance (*i.e.*, Department of Health and Human Services Office for Human Research Protections (OHRP) Federalwide Assurance (FWA)) appropriate for the scope of work or program plan; and

(B) Institutional Review Board (IRB) approval, as well as all documentation reviewed by the IRB to make their determination.

d. The HRPO retains final judgment on what activities constitute HSR, whether an exempt category applies, whether the risk determination is appropriate, and whether the planned HSR activities comply with the requirements in paragraph 1.a of this section.

e. You must notify the HRPO immediately of any suspensions or terminations of the Assurance of Compliance.

f. DoD staff, consultants, and advisory groups may independently review and inspect your research and research procedures involving human subjects and,

based on such findings, DoD may prohibit research that presents unacceptable hazards or otherwise fails to comply with DoD requirements.

g. Definitions for terms used in paragraph 1 of this article are found in DoDI 3216.02.

2. Animals.

a. Prior to initiating any animal work under the award, you must:

i. Register your research, development, test, and evaluation or training facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2136 and 9 CFR 2.30, unless otherwise exempt from this requirement by meeting the conditions in 7 U.S.C. 2136 and 9 CFR parts 1–4 for the duration of the activity.

ii. Have your proposed animal use approved in accordance with Department of Defense Instruction (DoDI) 3216.01, Use of Animals in DoD Programs by a DoD Component Headquarters Oversight Office.

iii. Furnish evidence of such registration and approval to the grants officer.

b. You must make the animals on which the research is being conducted, and all premises, facilities, vehicles, equipment, and records that support animal care and use available during business hours and at other times mutually agreeable to you, the United States Department of Agriculture Office of Animal and Plant Health Inspection Service (USDA/APHIS) representative, personnel representing the DoD component oversight offices, as well as the grants officer, to ascertain that you are compliant with 7 U.S.C. 2131 *et seq.*, 9 CFR parts 1–4, and DoDI 3216.01.

c. Your care and use of animals must conform with the pertinent laws of the United States, regulations of the Department of Agriculture, and regulations, policies, and procedures of the Department of Defense (see 7 U.S.C. 2131 *et seq.*, 9 CFR parts 1–4, and DoDI 3216.01).

d. You must acquire animals in accordance with DoDI 3216.01.

3. Use of Remedies.

Failure to comply with the applicable requirements in paragraphs 1–2 of this section may result in the DoD Component’s use of remedies, *e.g.*, wholly or partially terminating or suspending the award, temporarily withholding payment under the award pending correction of the deficiency, or disallowing all or part of the cost of the activity or action (including the federal share and any required cost sharing or matching) that is not in compliance. See OAR Article III.

Section B. [Reserved]

Appendix D to Part 1122—Terms and Conditions for NP Article IV, “Other National Policy Requirements”

A DoD Component must use the following wording for NP Article IV of its general terms and conditions in accordance with the provisions of Subpart B of this part.

NP Article IV. Other National Policy Requirements. (December 2014)

Section A. Cross-cutting requirements.

1. *Debarment and suspension.* You must comply with requirements regarding debarment and suspension in Subpart C of 2

CFR part 180, as adopted by DoD at 2 CFR part 1125. This includes requirements concerning your principals under this award, as well as requirements concerning your procurement transactions and subawards that are implemented in PROC Articles I through III and SUB Article II.

2. *Drug-free workplace.* You must comply with drug-free workplace requirements in Subpart B of 2 CFR part 26, which is the DoD implementation of 41 U.S.C. chapter 81, “Drug-Free Workplace.”

3. *Lobbying.*

a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DoD at 32 CFR part 28, and submit all disclosures required by that statute and regulation.

b. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

c. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions.

4. *Officials not to benefit.* You must comply with the requirement that no member of Congress shall be admitted to any share or part of this award, or to any benefit arising from it, in accordance with 41 U.S.C. 6306.

5. *Hatch Act.* If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508) concerning political activities of certain State and local government employees, as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. *Native American graves protection and repatriation.* If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7. *Fly America Act.* You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301–10.131 through 301–10.143. The law and regulations require that U.S. Government financed international air travel of passengers and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost sharing

arrangement with a U.S. carrier, if such service is available.

8. *Use of United States-flag vessels.* You must comply with the following requirements of the Department of Transportation at 46 CFR 381.7, in regulations implementing the Cargo Preference Act of 1954:

a. Pursuant to Public Law 83–664 (46 U.S.C. 55305), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 8.a of this section must be furnished to both our award administrator (through you in the case of your contractor’s bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. *Research misconduct.* You must comply with requirements concerning research misconduct in Enclosure 4 to DoD Instruction 3210.7, “Research Integrity and Misconduct.” The Instruction implements the Governmentwide research misconduct policy that the Office of Science and Technology Policy published in the **Federal Register** (65 FR 76260, December 6, 2000, available through the U.S. Government Printing Office website: <https://www.federalregister.gov/documents/2000/12/06/00-30852/executive-office-of-the-president-federal-policy-on-research-misconduct-preamble-for-research>).

10. *Requirements for an Institution of Higher Education Concerning Military Recruiters and Reserve Officers Training Corps (ROTC).*

a. As a condition for receiving funds available to the DoD under this award, you agree that you are not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

i. The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps (ROTC)—in accordance with 10 U.S.C. 654 and other applicable Federal laws—at that institution (or any subelement of that institution);

ii. Any student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education.

iii. The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

iv. Access by military recruiters for purposes of military recruiting to the names of students (who are 17 years of age or older and enrolled at that institution or any subelement of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of DoD funds under this award and all other DoD grants and cooperative agreements; and

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. *Historic preservation.* You must identify to us any:

a. Property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, “Identification and Protection of Historic Properties,” [3 CFR, 1971–1975 Comp., p. 559]. Impacts to historical properties are included in the definition of “human environment” that require impact assessment under NEPA (See NP Article II, Section A).

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (54 U.S.C. chapter 3125).

12. *Relocation and real property acquisition.* You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. *Confidentiality of patient records.* You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd–2.

14. *Pro-Children Act.*

You must comply with applicable restrictions in the Pro-Children Act of 1994 (Title 20, Chapter 68, subchapter X, Part B of the U.S. Code) on smoking in any indoor facility:

a. Constructed, operated, or maintained under this award and used for routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18.

b. Owned, leased, or contracted for and used under this award for the routine provision of federally funded health care, day care, or early childhood development (Head Start) services to children under the age of 18.

15. *Constitution Day.* You must comply with Public Law 108–447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

16. *Trafficking in persons.* You must comply with requirements concerning trafficking in persons specified in the award term at 2 CFR 175.15(b), as applicable.

17. *Whistleblower protections.* You must comply with 10 U.S.C. 2409, including the:

a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies; and

b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.

Section B. [Reserved]

Dated: July 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–16410 Filed 8–18–20; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

2 CFR Part 1108

[DOD–2016–OS–0051]

RIN 0790–AJ46

Definitions for DoD Grant and Agreement Regulations

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This rule is the fifth of a sequence of six final rules published in the **Federal Register** to update the DoD Grant and Agreement Regulations (DoDGARs). Additionally, this rule provides definitions of terms that are common to the DoDGARs and establishes a central regulatory location for each term.

DATES: This rule is effective October 19, 2020.

FOR FURTHER INFORMATION CONTACT: Barbara Orlando, Basic Research Office, 571–372–6413.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Final Rule

This final rule incorporates the Office of Management and Budget’s (OMB) guidance to Federal agencies on administrative requirements, cost principles, and audit requirements that apply to Federal grants, cooperative agreements, and other assistance instruments (2 CFR part 200). Additionally, this rule provides definitions of terms that are common to the DoDGARs and establishes a central regulatory location for each term.

B. Legal Authorities for the Regulatory Action

There are two statutory authorities for this rule:

- 10 U.S.C. 113, which establishes the Secretary of Defense as the head of the Department of Defense (DoD); and
- 5 U.S.C. 301, which authorizes the head of an Executive department to prescribe regulations for the governance of that department and the performance of its business.

II. Regulatory History

In December 2014 (79 FR 76047), DoD established an interim implementation of the final guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” published by the Office of Management and Budget (OMB) on December 26, 2013, in 2 CFR part 200 (Uniform Guidance—available at 78 FR 78589). DoD then published a Notice of Proposed Rulemaking (November 7, 2016 (81 FR 78360)) that proposed changes to 2 CFR part 1108, Definitions, that would establish definitions of terms that are common to most portions of those regulations, as well as create a central location for the definitions.

III. Comments and Responses

DoD did not receive public comments in response to the Notice of Proposed Rulemaking that proposed 2 CFR part 1108, Definitions, which was published in the **Federal Register** on November 7, 2016. However, in reviewing the five other rules proposed on that date, which are being published as final rules in today’s **Federal Register**, and in developing the yet-to-be-published portions of the updated DoDGARs, DoD identified the need for changes to make corrections and enhance the clarity and currency of this part and its consistency with other parts of the DoDGARs. Therefore, we:

- Added “or agreements” to modify “officer” in 2 CFR 1108.80, Claim.

- Added “Indian tribe” in 2 CFR 1108.85(a), Cognizant agency for indirect costs.

- Added a definition of “cost-type award” at 2 CFR 1108.128 to be parallel to other terms defined in 2 CFR part 1108.

- Added a definition of “prior approval” at 2 CFR 1108.298 to ensure consistent understanding of use of the term.

- Added to the definition of “State” in 2 CFR 1108.350 the qualifier “for purposes of the administrative requirements of these regulations . . .” for clarity. Although this part already recognizes that a term can be defined differently in a national policy requirement, there also may be instances where an authorizing statute defines the term “State” differently when establishing eligibility for financial assistance.

- Modified the name of appendix A by substituting the term “types of awards” with “types of legal instruments” (*i.e.*, Background on assistance, acquisition, and terms for types of legal instruments) for consistency with the usage in the Federal Grant and Cooperative Agreement Act. Throughout this part, where appropriate, we used the word(s) “instruments” or “legal instruments, in lieu of “awards.”

- Eliminated redundancy, *e.g.*, by removing “prime” as a modifier of the defined term “award.”

- Updated language to ensure use of current terminology, *e.g.*, substituted “notice of funding opportunity” for “program announcement” in 2 CFR 1108.405(a), Voluntary (committed or uncommitted) cost sharing.

In addition, we made some minor edits, *e.g.*, changing plural usage to singular where the context warranted it; using defined terms, rather than descriptive language; and substituting language that is consistent with other parts of the DoDGARs.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits