

whether those rates are negotiated or de minimis (as described in 2 CFR 200.414(f)).

Section D. Allowability of program income as cost sharing or matching. If FMS Article VII of these general terms and conditions or the award-specific terms and conditions of this award specify that you are to use some or all of the program income you earn to meet cost-sharing or matching requirements under the award, then program income is allowable as cost sharing or matching to the extent specified in those award terms and conditions.

Section E. Valuation of services or property that you or subrecipients contribute or donate. You must establish values for services or property contributed or donated toward cost sharing or matching by you or subrecipients in accordance with the provisions of this section. These contributions or donations are distinct from third-party in-kind contributions to you or subrecipients, which are addressed in Section F of this article.

1. *Usual valuation of services or property that you or subrecipients contribute or donate.* Values established for contributions of services or property by you or a subrecipient must be the amounts allowable in accordance with the cost principles applicable to the entity making the contribution (i.e., you or the subrecipient), as identified in FMS Article III. For property, that generally is depreciation.

2. *Needed approvals for, and valuation of, property that you or subrecipients donate.*

a. *Types of property that may be donated.*

i. *Buildings or land.* If the purposes of this award include construction, facilities acquisition, or long-term use of real property, you may donate buildings or land to the project if you obtain our prior approval. Donation of property to the project, as described in PROP Article I, means counting the value of the property toward cost sharing or matching, rather than charging depreciation.

ii. *Other capital assets.* If you obtain our prior approval, you may donate to the project other capital assets identified in 2 CFR 200.439(b)(1) through (3).

b. *Usual valuation of donated property.* Unless you obtain our approval as described in paragraph E.2.c of this article, the value for the donated property must be the lesser of:

i. The value of the remaining life of the property recorded in your accounting records at the time of donation, or

ii. The current fair market value.

c. *Approval needed for alternative valuation of property.* If you obtained our approval in the approved budget, you may count as cost sharing or matching the current fair market value of the donated property even if it exceeds the value of the remaining life of the property recorded in your accounting records at the time of donation.

d. *Federal interest in donated property.* Donating buildings, land, or other property to the project, rather than charging deprecia-

tion, results in a Federal interest in the property in accordance with PROP Article I of these terms and conditions.

Section F. Valuation of third-party in-kind contributions.

1. *General.* If a third party furnishes goods or services to you or subrecipients that are to be counted toward cost sharing or matching under this award, the entity to which the third party furnishes the goods or services (i.e., you or a subrecipient) must document the fair market value of those in-kind contributions and, to the extent feasible, support those values using the same methods the entity uses internally.

2. *Valuation of third-party services.* You must establish values for third-party volunteer services and services of third parties' employees furnished to you or subrecipients as follows:

a. *Volunteer services.* Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor must be valued in accordance with 2 CFR 200.306(e).

b. *Services of third parties' employees.* When a third-party organization furnishes the services of its employees to you or a subrecipient, values for the contributions must be established in accordance with 2 CFR 200.306(f).

c. *Additional requirement for donations to nonprofit organizations.* For volunteer services or services of third parties' employees furnished to a nonprofit organization:

i. OMB guidance in 2 CFR 200.434(e) also applies and may require the nonprofit organization to allocate a proportionate share of its applicable indirect costs to the donated services.

ii. The indirect costs that the nonprofit organization allocates to the donated services in that case must be considered project costs and may be either reimbursed under the award or counted toward required cost sharing or matching, but not both.

3. *Valuation of third-party property.* You must establish values for third-party property furnished to you or subrecipients as follows:

a. *Supplies donated by third parties.* When a third-party organization donates supplies (e.g., office, laboratory, workshop, or classroom supplies), the value that may be counted toward cost sharing or matching may not exceed the fair market value of the supplies at the time of donation.

b. *Equipment, buildings, or land donated by third parties.*

i. The value of third-party donations of equipment, buildings, or land that may be counted toward cost sharing or matching when the third party transferred title to you or a subrecipient depends on the purpose of the award in accordance with the following:

(A) If one of the purposes of the award is to assist you or the subrecipient in the acquisition of equipment, buildings, or land, you may count the aggregate fair market value of the donated property toward cost sharing or matching.

(B) If the award's purposes instead include only the support of activities that require the use of equipment, buildings, or land, you may only charge depreciation unless you obtain our prior approval to count as cost sharing or matching the fair market value of equipment or other capital assets and fair rental charges for land.

ii. The values of the donated property must be determined in accordance with the usual accounting policies of the entity to which the third party transferred title to the property, with the qualifications specified in 2 CFR 200.306(i)(1) and (2) for donated land and buildings and donated equipment, respectively.

c. *Use of space donated by third parties.* If a third party makes space available for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed the fair rental value of comparable space as established by an independent appraisal, as described in 2 CFR 200.306(i)(3).

d. *Equipment loaned by third parties.* If a third party loans equipment for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed its fair rental value.

APPENDIX G TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE VII, “PROGRAM INCOME”

Unless a DoD Component revises the wording of Section A or E or reserves Section D, as permitted by §§1128.710 through 1128.725, a DoD Component's general terms and conditions must use the following wording for FMS Article VII.

FMS ARTICLE VII. PROGRAM INCOME (DECEMBER 2014)

Section A. Definition. The term “program income” as used in this award:

1. Is gross income that:
 - a. You earn that is directly generated by a supported activity or earned as a result of this award; or
 - b. A subrecipient earns as a result of a subaward you make under this award.
2. Includes, but is not limited to, income earned under this award from:
 - a. Fees for services performed;
 - b. The use or rental of real or personal property acquired under any Federal award and currently administered under this award;
 - c. The sale of commodities or items fabricated under this award;

d. License fees and royalties on patents and copyrights; and

e. Payments of principal and interest on loans made with Federal award funds.

3. Does not include for purposes of this award any:

a. Interest earned on advance payments, disposition of which is addressed in FMS Article II;

b. Proceeds from the sale of real property, equipment or supplies, which is addressed in PROP Articles III and IV;

c. Rebates, credits, discounts, and interest earned on any of them; and

d. Governmental revenues, including any taxes, special assessments, levies, fines and similar revenues you raise.

Section B. Encouragement to earn program income. You are encouraged to earn program income under this award when doing so does not interfere with the program or project the award supports.

Section C. Costs of generating program income. You may deduct costs incidental to the generation of program income from the amount that you use in accordance with Section E of this Article, as long as those costs are not charged to this award (which includes their being counted toward any cost sharing or matching you are required to provide).

Section D. License fees and royalties. You have no obligations to the Federal Government with respect to program income earned under this award from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions developed or produced under the award.

Section E. Use of program income.

1. You must use any program income that you earn during the period of performance under this award to increase the amount of the award (the sum of the Federal share and any cost sharing or matching you are required to provide), thereby increasing the amount budgeted for the project. The program income must be used for the purposes and under the terms and conditions of the award.

2. Your use of the additional funding is subject to the terms and conditions of this award, including:

- a. FMS Article II concerning your use of balances of program income before you request additional funds from us; and
- b. FMS Article III concerning allowability of costs for which the funds may be used.

3. You must report on each Federal Financial Report (SF-425) that you submit in accordance with REP Article II the program income that you earn and any that you use during the reporting period covered by that SF-425.

Section F. Duration of accountability for program income. The requirements concerning disposition of program income in Section E of this Article apply only to program income

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you earn during the period of performance. There are no requirements under this award applicable to program income you earn after the end of the period of performance.

PART 1130—PROPERTY ADMINISTRATION: GENERAL AWARD TERMS AND CONDITIONS

Sec.

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

SOURCE: 85 FR 51171, Aug. 19, 2020, unless otherwise noted.

§ 1130.1 Purpose of this part.

(a) This part specifies standard wording of general terms and conditions concerning equipment, supplies, and real, intangible, and federally owned property.

(b) It thereby implements OMB guidance in 2 CFR 200.310 through 200.316, as that guidance applies to general terms and conditions of grants and cooperative agreements.

§ 1130.2 Applicability of this part.

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

§ 1130.3 Exceptions from requirements of this part.

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

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§ 1130.4 Organization of this part.

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and re-

sponsibilities of the Federal Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) Table 1 shows which article of general terms and conditions may be found in each of appendices A through F to this part (with the associated direction to DoD Components in Subparts A through F, respectively):

TABLE 1 TO PARAGRAPH (c)

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award within PROP Article . . .
Appendix A	Title to property	I.
Appendix B	Property management system	II.
Appendix C	Use and disposition of real property	III.
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Appendix E	Use and disposition of federally owned property	V.
Appendix F	Intangible property	VI.

Subpart A—Title to Property (PROP Article I)

§ 1130.100 Purpose of PROP Article I.

PROP Article I specifies in whom and under what conditions title to property vests under the award. It thereby implements OMB guidance for grants and cooperative agreements:

(a) Pertaining to vesting of title to property, in 2 CFR 200.311(a), 200.312(a), 200.313(a), 200.314(a), and 200.315(a).

(b) Pertaining to the property trust relationship in 2 CFR 200.316.

§ 1130.105 Title to property acquired under awards.

(a) *General policy.* Title to tangible property that a recipient acquires under an award (whether by purchase, construction or fabrication, development, or otherwise), and title to intangible property that a recipient acquires other than by developing or producing it under an award, generally vests in the recipient subject to the conditions in PROP Articles II–IV and Section D of PROP Article VI, which protect the Federal interest in the property.

(b) *Exceptions to the general policy when there is statutory authority—(1) Exempt property in general.* If a DoD Com-

ponent has statutory authority to do so, it may vest title in recipients to property acquired under awards either unconditionally or subject to fewer conditions than those in PROP Articles II–IV and VI. This subpart refers to acquired property for which a DoD Component has such statutory authority—and elects to use it—as “exempt property.”

(2) *Research awards.* (i) Under 31 U.S.C. 6306, a DoD Component may vest title to tangible personal property (*i.e.*, equipment and supplies) in a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research—without further obligation to the Federal Government or subject to conditions the DoD Component deems appropriate—if the property is bought with amounts provided under a grant or cooperative agreement for basic or applied research.

(ii) As a matter of policy, to enhance the university infrastructure for future performance of defense research and research-related education and training, DoD Components must make maximum use of the authority of 31 U.S.C. 6306 to

vest title to equipment in nonprofit institutions of higher education subject to only the following three conditions:

(A) The recipient uses the equipment for the authorized purposes of the project or program until the property is no longer needed for those purposes.

(B) The recipient manages the equipment as provided in PROP Article II of the general terms and conditions (see Subpart B of this part). This includes maintaining property records that include the percentage of Federal participation in the costs of the project or program under which the recipient acquired the exempt property, so that the recipient may deduct the Federal share if it wishes to use the property in future contributions for cost sharing or matching purposes on Federal awards.

(C) The DoD Component reserves the right to transfer title to the equipment to another recipient entity if the Principal Investigator relocates his or her research program to that entity.

(c) *Award terms and conditions*—(1) *General*. Unless a DoD Component has a statute authorizing it to identify acquired property as exempt property, as described in paragraph (b) of this section, it must use the wording appendix A to this part provides for Section A of PROP Article I.

(2) *Exceptions*. (i) If a DoD Component has statutory authority such as described in paragraph (b) of this section, and elects to use that authority for awards subject to its general terms and conditions, it must insert wording in paragraph A.2 of PROP Article I to:

(A) Identify the type or types of property it is exempting from the standard requirements for title vesting, use, and disposition contained in PROP Articles II through IV and VI and reporting requirements contained in REP Article III of the general terms and conditions.

(B) If it is exempting the property from some, but not all, of the standard requirements, identify the requirements to which the exempt property will be subject.

(ii) Paragraph A.2 of PROP Article I in general terms and conditions used for research awards to institutions of higher education and nonprofit organizations whose primary purpose is conducting scientific research generally should provide for vesting of title to

acquired equipment and supplies in those types of entities when they are conducting basic or applied research subject only to the three conditions described in paragraph (b)(2)(ii) of this section.

§ 1130.110 Property trust relationship.

(a) *OMB guidance*. OMB guidance in 2 CFR 200.316 describes the property trust relationship. It states that:

(1) Recipients must hold real property, equipment, and intangible property acquired or improved under grants or cooperative agreements in trust for the beneficiaries of the projects or programs under which the property was acquired or improved; and

(2) A Federal agency may require a recipient to record liens or other appropriate notices of record to indicate that personal or real property was acquired or improved under a grant or cooperative agreement, making the property's use and disposition subject to the award terms and conditions.

(b) *DoD implementation*. A DoD Component's general terms and conditions must specify that recipients hold title to real property, equipment, and intangible property acquired or improved under DoD grants and cooperative agreements in trust for the beneficiaries of the projects or programs carried out under those awards.

(c) *Award terms and conditions*. A DoD Component's general terms and conditions:

(1) Must include the wording appendix A to this part provides for paragraph B.1 of PROP Article I, except that a DoD Component may instead reserve Section B if there will be no acquisition or improvement of real property, equipment, or intangible property under awards using those general terms and conditions or subawards under those awards.

(2) May add wording to the reserved paragraph B.2 of the wording of Section B of PROP Article I to require recipients to record liens or other notices of record, as described in paragraph (a) of this section.

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§ 1130.115 Title to federally owned property.

(a) *Requirement.* A DoD Component's general terms and conditions must inform recipients that title to federally owned property remains with the Federal Government and include the wording appendix A to this part provides for Section C of PROP Article I.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must either:

(1) Include the wording appendix A to this part provides for Section C of PROP Article I to indicate that title to federally owned property remains with the Federal Government; or

(2) Reserve Section C if it provides no federally owned property under its awards.

§ 1130.120 Federal interest in donated property.

(a) *Requirement.* A DoD Component's general terms and conditions must inform recipients that the Federal Government acquires an interest in any real property or equipment for which the value of the remaining life of the property in the recipient's accounting records or the fair market value of the property is counted toward required cost sharing or matching, rather than charging depreciation.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the wording appendix A to this part provides for Section D of PROP Article I to specify the Federal interest in donated real property or equipment; or

(2) Reserve Section D of PROP Article I if the DoD Component does not permit recipients to count the fair market value of real property or equipment toward cost sharing or matching.

§ 1130.125 Federal interest in property improved under awards.

(a) *Requirement.* A DoD Component's general terms and conditions must address the Federal interest in improvements to real property or equipment that results if a recipient directly charges the costs of the improvements to an award.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the wording appendix A to this part provides for Section E of PROP Article I to specify the Federal interest in improved real property or equipment; or

(2) Reserve Section E of PROP Article I if there will be no improvements to real property or equipment under awards using those general terms and conditions or subawards under those awards.

Subpart B—Property Management System (PROP Article II)

§ 1130.200 Purpose of PROP Article II.

(a) PROP Article II prescribes standards for:

(1) Insurance coverage for real property and equipment acquired or improved under awards;

(2) The system that a recipient uses to manage both equipment that is acquired or improved in whole or in part under awards and federally owned property.

(b) It thereby implements OMB guidance in 2 CFR 200.310 and 200.313(d)(1) through (4), and partially implements 2 CFR 200.313(b).

§ 1130.205 Insurance coverage for real property and equipment.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.310 includes a requirement for recipients' insurance coverage for real property and equipment acquired or improved under grants and cooperative agreements and states that federally owned property need not be insured unless required by Federal award terms and conditions.

(b) *DoD implementation.* A DoD Component's general terms and conditions must require recipients to provide insurance coverage for real property and equipment acquired or improved under awards. However, unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, DoD awards will not require recipients to insure federally owned property.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the wording appendix B to this part provides for Section A of PROP Article II; or

(2) Reserve Section A of PROP Article II if there will be no real property or equipment acquired or improved under awards using those terms and conditions or subawards under those awards.

§ 1130.210 Other property management system standards for States.

(a) *Requirement.* A DoD Component's general terms and conditions must address the standards for States' property management systems.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the wording appendix B to this part provides for Section B of PROP Article II; or

(2) Reserve Section B of PROP Article II if no State will acquire or improve equipment, in whole or in part, or be accountable for federally owned property under awards using those general terms and conditions or subawards under those awards.

§ 1130.215 Other property management system standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(a) *Requirement.* A DoD Component's general terms and conditions must address the standards for property management systems of institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the wording appendix B to this part provides for Section C of PROP Article II; or

(2) Reserve Section C of PROP Article II if no institution of higher education, nonprofit organization, local government, or Indian tribe will acquire or improve equipment, in whole or in part, or be accountable for federally owned property under awards using those general terms and conditions or subawards under those awards.

Subpart C—Use and Disposition of Real Property (PROP Article III)

§ 1130.300 Purpose of PROP Article III.

PROP Article III specifies requirements for recipients' use and disposition of real property acquired or improved under an award. It thereby implements OMB guidance in 2 CFR 200.311(b) and (c).

§ 1130.305 Use of real property.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.311(b) states that, except as otherwise provided by Federal statute or the Federal awarding agency, a recipient must use real property acquired or improved under a grant or cooperative agreement for the originally authorized purpose as long as needed for that purpose, during which time the recipient must not dispose of the property or encumber its title or other interests.

(b) *DoD implementation.* Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, DoD awards must permit recipients to do the following:

(1) While real property acquired or improved under an award still is needed for the authorized purpose, also use it for other projects or programs that either are supported by DoD Components or other Federal agencies or not federally supported, as long as that use does not interfere with the property's use for the authorized purpose.

(2) After the real property no longer is needed for the authorized purpose, with the written approval of the award administration office, use the property on other federally supported projects or programs that have purposes consistent with those authorized for support by the DoD Component that made the award under which the property was acquired or improved.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must either:

(1) Include the wording appendix C to this part provides for Section A of PROP Article III; or

(2) If a statute or program regulation in the Code of Federal Regulations

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specifies different requirements for recipients' use of real property, substitute alternative wording for Section A to specify those requirements.

§ 1130.310 Disposition of real property.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.311(c):

(1) Addresses the recipient's responsibility to request disposition instructions for real property when the recipient no longer needs it for the originally authorized purpose; and

(2) Identifies three alternative disposition methods those instructions may specify.

(b) *DoD implementation.* DoD implements the guidance in 2 CFR 200.311(c) through award terms and conditions that govern disposition of real property acquired or improved under awards.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix C to this part provides for Section B of PROP Article III to specify requirements concerning disposition of real property acquired or improved under awards.

Subpart D—Use and Disposition of Equipment and Supplies (PROP Article IV)

§ 1130.400 Purpose of PROP Article IV.

PROP Article IV specifies requirements for recipients' use and disposition of equipment and supplies in which there is a Federal interest. It thereby implements OMB guidance in:

(a) 2 CFR 200.313(a) through (c), 200.313(d)(5), and 200.313(e) as that guidance applies to requirements for use and disposition of equipment; and

(b) 2 CFR 200.314, as that guidance applies to requirements for use and disposition of supplies.

§ 1130.405 Property subject to PROP Article IV.

(a) *Requirement.* A DoD Component's general terms and conditions must identify the types of non-exempt property to which requirements for use and disposition of equipment and supplies apply.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's

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general terms and conditions must use the wording appendix D to this part provides for Section A of PROP Article IV. That wording identifies the categories of equipment and supplies in which there is a Federal interest.

§ 1130.410 Requirements for a State's use and disposition of equipment.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.313(a) sets forth basic conditions for use of equipment acquired under a grant or cooperative agreement that apply when title to the equipment is vested in a recipient conditionally, because the awarding agency either does not have statutory authority to vest title in the equipment unconditionally or elects not to do so.

(2) 2 CFR 200.313(b) provides that a State must use, manage, and dispose of equipment in accordance with State laws and procedures.

(b) *DoD implementation.* DoD implements 2 CFR 200.313(a) and (b) through award terms and conditions that govern States' use and disposition of equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for Section B of PROP Article IV to specify the requirements for a State's use and disposition of equipment in which there is a Federal interest.

§ 1130.415 Use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.313(a) sets forth basic conditions for use of equipment acquired under a grant or cooperative agreement that apply when title to the equipment is vested in a recipient conditionally, because the awarding agency either does not have statutory authority to vest title in the equipment unconditionally or elects not to do so.

(2) 2 CFR 200.313(c) provides the parameters for use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(3) 2 CFR 200.313(d)(5) calls for use of sales procedures to ensure highest possible return when selling equipment.

(b) *DoD implementation.* For equipment in which there is a Federal interest under awards to institutions of higher education, nonprofit organizations, local governments, or Indian tribes, DoD implements through award terms and conditions the following portions of 2 CFR part 200 as they apply to use of equipment prior to the time of its disposition:

(1) 2 CFR 200.313(a) and (c); and

(2) 2 CFR 200.313(d)(5), as it applies to equipment sales prior to the time of disposition, to offset the acquisition cost of replacement equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for Section C of PROP Article IV to specify the requirements for use of equipment described in paragraph (b) of this section.

§ 1130.420 Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.313(e) addresses disposition of original or replacement equipment acquired under a grant or cooperative agreement by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(b) *DoD implementation.* DoD implements 2 CFR 200.313(e) through award terms and conditions that govern disposition of original or replacement equipment acquired under an award by an institution of higher education, nonprofit organization, local government, or Indian tribe when there is a Federal interest in the equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for Section D of PROP Article IV to specify the requirements for disposition of equipment described in paragraph (b) of this section.

§ 1130.425 Use and disposition of supplies.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.314 sets forth requirements for use and disposition of supplies acquired under a grant or cooperative agreement.

(b) *DoD implementation.* DoD implements 2 CFR 200.314 through award terms and conditions that govern use and disposition of supplies acquired under awards either by purchase or by donation as cost sharing or matching.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for Section E of PROP Article IV to specify the requirements for use and disposition of acquired supplies.

Subpart E—Use and Disposition of Federally Owned Property (PROP Article V)

§ 1130.500 Purpose of PROP Article V.

PROP Article V specifies requirements for recipients' use and disposition of federally owned property. It implements the portion of OMB guidance in 2 CFR 200.312(a) that applies to disposition of federally owned property.

§ 1130.505 Content of PROP Article V.

A DoD Component's general terms and conditions must either:

(a) Include the wording appendix E to this part provides for PROP Article V to specify requirements for use and disposition of federally owned property; or

(b) Reserve PROP Article V if there is no possibility of recipients or sub-recipients being accountable for federally owned property under awards using those terms and conditions.

Subpart F—Intangible Property (PROP Article VI)

§ 1130.600 Purpose of PROP Article VI.

PROP Article VI sets forth the rights and responsibilities of recipients and the Federal Government with respect to intangible property. It thereby implements OMB guidance in 2 CFR 200.315.

§ 1130.605 Copyrights asserted in works developed or otherwise acquired under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(b) addresses recipients' and the Federal Government's rights related to works that recipients may

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copyright under grants and cooperative agreements.

(b) *DoD implementation.* DoD implements 2 CFR 200.315(b) through award terms and conditions that specify recipient and DoD rights with respect to copyrightable works.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix F to this part provides for Section A of PROP Article VI to affirm the recipient's right to assert copyright in works it develops or otherwise acquires under an award, as well as DoD's right to use the works for Federal purposes.

§ 1130.610 Inventions developed under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(c) states that recipients of grants and cooperative agreements are subject to applicable regulations concerning patents and inventions, including Department of Commerce regulations at 37 CFR part 401.

(b) *DoD implementation.* In implementing 2 CFR 200.315(c) for awards for the performance of experimental, developmental, or research work, DoD:

(1) Extends to other entities the patent rights provisions of chapter 18 of Title 35 of the U.S. Code and 37 CFR part 401 that directly apply to small business firms and nonprofit organizations. This broadened applicability is in accordance with the February 18, 1983, Presidential memorandum on Government patent policy, referred to in Executive Order 12591, "Facilitating Access to Science and Technology."

(2) Establishes a requirement for recipients to provide final reports listing all subject inventions under their awards or stating there were none, a requirement that 37 CFR 401.5(f)(1) provides as an agency option.

(3) Incorporates the prohibition in 35 U.S.C. 212 on asserting Federal Government rights in inventions made by recipients of scholarships, fellowships, training grants, or other awards made primarily for educational purposes.

(c) *Award terms and conditions.* (1) *Awards for research, developmental, or experimental work.* A DoD Component's general terms and conditions for awards for the performance of experimental, developmental, or research

work funded in whole or in part by the Federal Government must include the wording appendix F to this part provides for Section B of PROP Article VI, with one permitted exception. The exception is that a DoD Component may reserve or substitute alternative wording for paragraph B.2.b of Section B of PROP Article VI, as appropriate, if it elects to:

(i) Omit the requirement for final invention reports;

(ii) Substitute "120 calendar days" for "90 calendar days" to provide an additional 30 days for recipient's submissions of final reports after the end date of the period of performance; or

(iii) Include a requirement for recipients to submit information about each patent application they submit for a subject invention, interim listings of all subject inventions, or both, which the Department of Commerce regulations at 37 CFR 401.5(f)(2) and (3) permit agencies to require.

(2) *Awards for primarily educational purposes.* A DoD Component's general terms and conditions for awards to support scholarships or fellowships, training grants, or other awards for primarily educational purposes must replace the wording appendix F to this part provides for Section B of PROP Article VI with an alternative award provision stating that the Federal Government will have no rights to inventions made by recipients.

(3) *Awards for other purposes.* A DoD Component developing general terms and conditions for awards other than those described in paragraphs (c)(1) and (2) of this section should:

(i) Consult its intellectual property counsel if it anticipates that recipients may develop patentable inventions under its awards, to identify any applicable statutes or regulations and determine an appropriate substitute for the wording appendix F to this part provides for Section B of PROP Article VI; or

(ii) Reserve Section B of PROP Article VI if it does not expect development of any patentable inventions under those awards.

§ 1130.615 Data produced under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(d) and (e) addresses rights in data under grants and cooperative agreements.

(b) *DoD implementation.* DoD implements 2 CFR 200.315(d) and (e) through award terms and conditions.

(c) *Award terms and conditions—(1) General.* A DoD Component's general terms and conditions must include the wording appendix F to this part provides for Section C of PROP Article VI.

(2) *Exception.* A DoD Component may reserve paragraph C.2 of Section C of PROP Article VI in its general terms and conditions if:

(i) Those terms and conditions will not be used for research awards; and

(ii) The DoD Component determines that no research data as defined in 2 CFR 200.315 will be generated under the awards using those terms and conditions.

§ 1130.620 Intangible property acquired, but not developed or produced, under awards.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(a) addresses use and disposition of intangible property that is acquired under grants and cooperative agreements (in addition to vesting of title, which is implemented in § 1130.105 and appendix A to this part).

(b) *DoD implementation.* DoD implements 2 CFR 200.315(a) through award terms and conditions that govern use and disposition of intangible property that is acquired, but not developed or produced, under awards.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix F to this part provides for Section D of PROP Article VI.

APPENDIX A TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE I, “TITLE TO PROPERTY”

Unless a DoD Component inserts or adds wording or reserves sections of the article, as provided in §§ 1130.105 through 1130.125, a DoD Component's general terms and conditions must use the following wording for PROP Article I.

PROP ARTICLE I. TITLE TO PROPERTY.
(DECEMBER 2014)

Section A. Title to property acquired under this award.

1. *General.* Other than any property identified in paragraph A.2 of this section as exempt property:

a. Title to real property, equipment, and supplies that you acquire (whether by purchase, construction or fabrication, development, or otherwise) and charge as direct project costs under this award vests in you, the recipient. Title to intangible property that you acquire (other than by developing or producing it) under this award also vests in you.

b. That title is a conditional title, subject to the terms and conditions in PROP Articles II–IV, Section D of PROP Article VI, and REP Article III of this award.

c. There is a Federal interest in the property, other than intangible property that you develop or produce under the award. For real property, equipment, and intangible property, we retain this Federal interest until final disposition of the property under PROP Article III (for real property), PROP Article IV (for equipment and supplies), or Section D of PROP Article VI (for intangible property that is acquired, other than by developing or producing it), a period that in some cases may extend beyond closeout of this award.

2. *Exempt property.* [Reserved]

Section B. Property trust relationship.

1. *Basic requirement.* Other than intangible property that you develop or produce under the award, you hold any real property, equipment, or intangible property that you acquire or improve under this award in trust for the beneficiaries of the project or program that you are carrying out under the award.

2. *Notices of record.* [Reserved]

Section C. Federally owned property. Title to any federally owned property that we provide to you under this award (or for which accountability is transferred to this award from another Federal award) remains with the Federal Government.

Section D. Federal interest in donated real property or equipment. If real property or equipment is acquired under this award through your donation of the property to the project or program (*i.e.*, counting the value of the remaining life of the property recorded in your accounting records or the fair market value as permitted under FMS Article VI of this award as part of your share of project costs to meet any cost sharing or matching requirements, rather than charging depreciation):

1. The Federal Government acquires through that donation an interest in the real property or equipment, the value of which at any given time is the product of:

a. The Federal share of the project costs under this award; and

b. The current fair market value of the property at that time.

2. The real property or equipment is subject to Section B of this article and the terms and conditions of PROP Articles II–IV and REP Article III that are applicable to property acquired under the award.

3. The Federal interest in the real property or equipment must be addressed at the time of property disposition.

Section E. Federal interest in property improved under the award.

1. The Federal Government has an interest in improvements (as distinct from ordinary repairs and maintenance) you make to an item of real property or equipment if you charge the costs of the improvements as direct costs to this award.

2. We thereby acquire an interest in the property if the Government did not previously have one. If the Government already had an interest in the property, the value of that Federal interest in the property increases by the amount of the Federal interest in the improvements.

3. The property is subject to Section B of this article and the terms and conditions of PROP Articles II–IV and REP Article III that are applicable to real property or equipment acquired under the award.

4. The Federal interest must be addressed at the time of property disposition.

APPENDIX B TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE II, “PROPERTY MANAGEMENT SYSTEM”

Unless a DoD Component reserves sections of the article, as provided in §§1130.205 through 1130.215, a DoD Component’s general terms and conditions must use the following wording for PROP Article II.

PROP ARTICLE II. PROPERTY MANAGEMENT SYSTEM. (DECEMBER 2014)

Section A. Insurance coverage for real property and equipment. You must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved under this award as you provide for real property and equipment that you own.

Section B. Other property management system standards for a State.

1. *Equipment.* Your property management system for equipment acquired or improved in whole or in part under this award must be in accordance with your State laws and procedures.

2. *Federally owned property.* You may use your own property management system for any federally owned property for which you are accountable, as long as it meets the following minimum standards:

a. *Records.* Your records must include for each item of federally owned property:

i. A description of the item.

ii. The location of the item.

iii. The serial or other identification number.

iv. Which Federal agency holds title.

v. The date you received the item.

vi. Any data on the ultimate disposition of the item, such as the date of disposal.

vii. The Federal award identification number of the award under which you are accountable for the item.

b. *Inventory.* You must take a physical inventory of federally owned property annually.

c. *Control system.* You must:

i. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of federally owned property.

ii. Investigate any loss, damage, or theft of federally owned property and promptly notify the award administration office.

d. *Maintenance.* You must maintain the property in good condition.

Section C. Other property management system standards for an institution of higher education, nonprofit organization, local government, or Indian tribe. Your procedures for managing equipment (including replacement equipment) acquired or improved in whole or in part under this award and any federally owned property for which you are accountable under this award must, as a minimum, meet the requirements in this section.

1. *Records.* You must maintain records that include for each item of equipment or federally owned property:

a. A description of the item.

b. The serial or other identification number.

c. Who holds title (*e.g.*, you or the Federal Government and, if the latter, which Federal agency).

d. The source of funding for the equipment, including the Federal award identification number, or the source of the federally owned property, including the award number of the award under which you are accountable for the property.

e. The acquisition date and cost of the equipment (or improvement to the equipment) or the date you received the federally owned property.

f. The location, use, and condition of the equipment or federally owned property.

g. Information from which one can calculate the amount of the Federal interest in the acquisition or improvement of the item (this amount is zero after you compensate us for the Federal interest in the item or improvement).

h. Any data on the ultimate disposition of the item including the date of disposal and sale price.

2. *Labelling.* You must ensure that property owned by the Federal Government is labeled to identify it as federally owned property.

3. *Inventory.*

a. You must take a physical inventory of equipment in which there is a Federal interest and reconcile the results with your records at least once every 2 years.

b. You must take an annual inventory of any federally owned property for which you are accountable under this award.

4. *Control system.* You must:

a. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of equipment and federally owned property.

b. Investigate any loss, damage, or theft and notify the award administration office if it involved equipment in which there is a Federal interest under the award or federally owned property.

5. *Maintenance.* You must maintain equipment acquired or improved in whole or in part under the award and federally owned property in good condition.

APPENDIX C TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE III, “USE AND DISPOSITION OF REAL PROPERTY”

Unless a DoD Component substitutes wording in Section A, as provided in §1130.305, a DoD Component’s general terms and conditions must use the following wording for PROP Article III.

PROP ARTICLE III. USE AND DISPOSITION OF REAL PROPERTY. (DECEMBER 2014)

Section A. Use of real property.

1. You must use real property acquired or improved under this award for the originally authorized purpose as long as needed for that purpose. During that time, you may not:

a. Dispose of the property except, with the approval of the award administration office, to acquire replacement property under this award, in which case you must use the proceeds from the disposition as an offset to the cost of the replacement property; or

b. Encumber the title or other interests in the property without the approval of the award administration office identified in this award.

2. During the time that the real property is used for the originally authorized purpose, you may make the property available for use on other projects or programs, but only if that use will not interfere with the property’s use as needed for its originally authorized purpose.

a. First preference must be given to other projects or programs supported by DoD Components and second preference to those supported by other Federal agencies.

b. Third preference is for other projects or programs not currently supported by the Federal Government. You should charge user

fees for use of the property in those cases, if it is at all practicable.

3. When the real property is no longer needed for the originally authorized purpose, with the written approval of the award administration office, you may delay final disposition of the property to use it on other federally sponsored projects or programs. A condition for the award administration office’s approval is that the other projects or programs have purposes consistent with those authorized for support by the DoD Component that made the award under which the property was acquired or improved.

Section B. Disposition of real property. When you no longer need real property for the originally authorized purpose, you must obtain disposition instructions from the award administration office, except as provided in paragraph A.3 of this article. Those instructions will provide for one of the following three alternatives, which are that you:

1. Retain title after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of “Federal interest.”

2. Sell the property and compensate us for the Federal interest in the property, as described in 2 CFR 200.311(c)(2).

3. Transfer title to us or a third party we designate, as described in 2 CFR 200.311(c)(3).

APPENDIX D TO PART 1130—TERMS AND CONDITIONS FOR PROP ARTICLE IV, “USE AND DISPOSITION OF EQUIPMENT AND SUPPLIES”

As specified in §§1130.405 through 1130.425, a DoD Component’s general terms and conditions must use the following wording for PROP Article IV.

PROP ARTICLE IV. USE AND DISPOSITION OF EQUIPMENT AND SUPPLIES. (DECEMBER 2014)

Section A. Property subject to this article. This article specifies requirements for use and disposition of equipment and supplies. If a provision of PROP Article I identifies any type of equipment or supplies as exempt property, requirements of this Article apply to that exempt property only to the extent specified in that provision of PROP Article I or an award-specific term or condition. The types of non-exempt property to which this article applies are:

1. Supplies that you acquire either by purchase or by donation as cost sharing or matching under this award; and

2. Equipment for which title is vested conditionally in you. That includes equipment with a conditional title resulting from your having, either under this award or under a previous award from which you transferred accountability for the equipment to this award:

a. Directly charged as project costs, in whole or in part, the acquisition (by purchase, construction or fabrication, or development) of equipment;

b. Donated the equipment to the project or program by counting the value of the remaining life of the property recorded in your accounting records or the fair market value toward any cost sharing or matching requirements under the award, rather than charging depreciation (see PROP Article I, Section D); or

c. Directly charged as project costs improvements to the equipment that meet the criteria given in paragraph E.1 of PROP Article I.

Section B. Requirements for a State's use and disposition of equipment. You:

1. Must use the equipment for the authorized purposes of the project or program during the period of performance, or until the property is no longer needed for those purposes.

2. May not encumber the property without the prior written approval of the award administration office.

3. Must use and dispose of the equipment in accordance with your State laws and procedures.

Section C. Use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe. You:

1. Must use the equipment for the authorized purposes of the project or program under this award until the equipment is no longer needed for those purposes, whether or not the project or program continues to be supported by this award.

2. May not encumber the equipment without the prior written approval of the award administration office.

3. During the time that the equipment is used for the project or program under this award:

a. You must make the equipment available for use on other projects or programs but only if that use will not interfere with the equipment's use as needed for the project or program supported by this award.

i. First preference must be given to other projects or programs supported or previously supported by DoD Components

ii. Second preference to projects or programs supported or previously supported by other Federal agencies.

iii. Third preference is for other projects or programs not supported by the Federal Government. You should charge user fees for use of the equipment in those cases, if it is at all practicable.

b. You may use the equipment, if you need to acquire replacement equipment, as a trade-in or sell it (using sales procedures designed to ensure the highest possible return) and use the proceeds from the sale to offset the cost of the replacement equipment.

4. When the equipment is no longer needed for the project or program under this award, you may defer final disposition of the equipment and continue to use it on other federally sponsored projects or programs. You must give first priority to other projects or programs supported by DoD Components.

5. Notwithstanding the encouragement in FMS Article VII to earn program income, you may not use equipment in which there currently is a Federal interest—whether you acquired it under this award or are otherwise accountable for it under this award—to provide services for a fee that is less than private companies charge for equivalent services.

Section D. Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe. You must request disposition instructions from the award administration office when either original or replacement equipment acquired under this award with a current fair market value that exceeds \$5,000 is no longer needed for the original project or program or for other federally sponsored activities as described in paragraph C.4 of this article. For each item of equipment with a current fair market value of \$5,000 or less, you may retain, sell, or otherwise dispose of the item with no further obligation to the Federal Government.

1. We may issue disposition instructions that:

a. Allow you to retain or sell any item of equipment after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of "Federal interest;" or

b. Require you to transfer title to the equipment to a Federal agency or a third party, in which case you are entitled to compensation from us for the non-Federal interest in the equipment, plus any reasonable shipping or interim storage costs incurred.

2. If we fail to provide disposition instructions for any item of equipment within 120 calendar days of receiving your request, you may retain or sell the equipment, but you must compensate us for the amount of the Federal interest in the equipment.

3. If you sell the equipment:

a. You must use sales procedures designed to ensure the highest possible return; and

b. You may deduct and retain for selling and handling expenses either \$500 or ten percent of the proceeds, whichever is less.

Section E. Use and disposition of supplies acquired under this award.