

advanced to a recipient or subrecipient to cover its estimated disbursement needs for a given initial period, after which payment is made by way of reimbursement.

## Appendix A to Part 1108—Background on Assistance, Acquisition, and Terms for Types of Awards

### I. Purpose of This Appendix

This appendix provides background intended to help avoid confusion about some terms:

A. That are used in this chapter to describe either types of awards that DoD Components, recipients, and subrecipients make, or the purposes for which those types of awards are used; and

B. For which this part provides definitions that vary depending on the context within which the terms are used.

### II. Why Definitions of Some Terms are Context-Dependent

A. The DoDGARs contain both:

1. Direction to DoD Components concerning their award of grants and cooperative agreements at the prime tier; and

2. Terms and conditions that DoD Components include in their grants and cooperative agreements to specify the Government's and recipients' rights and responsibilities, including post-award requirements with which recipients' actions must comply.

B. In some cases, the same defined term or two closely related terms are used in relation to both DoD Component actions at the prime tier and recipient or subrecipient actions at lower tiers under DoD Components' awards. But a given defined term may have meanings that differ at the two tiers. For example, in part because the Federal Grant and Cooperative Agreement Act applies to DoD Component actions at the prime tier but not to recipient or subrecipient actions at lower tiers (see sections III and IV of this appendix):

1. The terms "acquire" and "acquisition" do not have precisely the same meaning in conjunction with actions at the prime and lower tiers.

2. The meaning of the term "procurement contract" used to describe DoD Component prime-tier actions is not precisely the same as the meaning of "procurement transaction" or "contract" used to describe recipient or subrecipient actions at lower tiers.

### III. Background: Distinguishing Prime-Tier Relationships and Awards

A. The Federal Grant and Cooperative Agreement Act (31 U.S.C. chapter 63) specifies that the type of award a DoD Component is to use when making a prime award to a recipient is based on the nature of the relationship between the DoD Component and the recipient that the prime award reflects.

B. Specifically, except where another statute authorizes DoD to do otherwise, 31 U.S.C. chapter 63 specifies use of:

1. A procurement contract as the instrument reflecting a relationship between a DoD Component and a recipient when the

principal purpose of the relationship is to acquire property or services for the direct benefit or use of the Federal Government.

2. A grant or cooperative agreement as the instrument reflecting a relationship between those two parties when the principal purpose of the relationship is to carry out a public purpose of support or stimulation authorized by Federal statute.

C. The terms "acquisition" and "assistance" are defined in this part to correspond to the principal purposes described in paragraphs III.B.1 and 2 of this section, respectively. Using those terms, paragraphs III.B.1 and B.2 may be restated to say that grants and cooperative agreements are assistance instruments that DoD Components use at the prime tier for assistance purposes, as distinct from procurement contracts they use at that tier for acquisition.

### IV. Background: Distinguishing Types of Recipients' and Subrecipients' Awards

A. While the Federal Grant and Cooperative Agreement Act applies to Federal agencies, it does not govern types of awards that recipients and subrecipients make, whether or not they are lower-tier awards under a Federal prime grant or cooperative agreement. That statute therefore does not require a recipient or subrecipient to:

1. Consider any award it makes at a lower tier under a Federal assistance award as a grant or cooperative agreement. Therefore, at its option, a recipient or subrecipient may consider all of its lower-tier awards to be "contracts."

2. Associate an "assistance" relationship, as that term is defined in this part and used in this chapter, with any lower-tier transaction that it makes.

B. However, the DoDGARs in this chapter do distinguish between two classes of lower-tier transactions that recipients and subrecipients make: Subawards and procurement transactions. The distinction promotes uniformity in requirements for lower-tier transactions under DoD grants and cooperative agreements. It is based on a long-standing distinction in OMB guidance to Federal agencies, currently at 2 CFR part 200, which DoD implements in this chapter.

C. The distinction between a subaward and procurement transaction is based on the primary purpose of that transaction.

1. The transaction is a subaward if a recipient or subrecipient enters into it with another entity at the next lower tier in order to transfer—for performance by that lower-tier entity—a portion of the substantive program for which the prime DoD grant or cooperative agreement provided financial assistance to the recipient. Because the Federal Grant and Cooperative Agreement Act does not apply to the recipient or subrecipient, it may make a subaward as defined in this part using an instrument that it considers a contract.

2. The transaction is a procurement transaction if the recipient or subrecipient enters into it in order to purchase goods or services from the lower-tier entity that the recipient or subrecipient needs to perform its portion of the substantive program supported by the prime DoD award.

Dated: October 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 2 CFR Part 1120

[DOD-2016-OS-0052]

RIN 0790-AJ47

### Format for DoD Grant and Cooperative Agreement Awards

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

**ACTION:** Proposed rule.

**SUMMARY:** This notice of proposed rulemaking (NPRM) is the second of a sequence of six NPRM documents in this issue of the **Federal Register** that collectively establish for DoD grants and cooperative agreements an updated interim implementation of Governmentwide guidance on administrative requirements, cost principles, and audit requirements for Federal awards and make other needed updates to the DoD Grant and Agreement Regulations (DoDGARs). This NPRM adds a new DoDGARs part to establish a standard format for organizing the content of DoD Components' grant and cooperative agreement awards and modifications to them.

**DATES:** To ensure that they can be considered in developing the final rule, comments must be received at either the Web site or mailing address indicated below by February 6, 2017.

**ADDRESSES:** You may submit comments identified by docket number, or by Regulatory Information Number (RIN) and title, by either of the following methods:

*The Web site:* <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

*Mail:* Department of Defense, Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Box 24, Alexandria, VA 22350-1700.

*Instructions:* All submissions must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from the public is to make the submissions available for public viewing on the

Internet at <http://www.regulations.gov> without change (*i.e.*, as they are received, including any personal identifiers or contact information).

**FOR FURTHER INFORMATION CONTACT:** Wade Wargo, Basic Research Office, telephone 571-372-2941.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

*A. Purpose of the Regulatory Action*

1. The Need for the Regulatory Action and How the Action Meets That Need

As explained in the **SUPPLEMENTARY INFORMATION** section of the NPRM immediately preceding this one in this issue of the **Federal Register**, this is one of six NPRMs that collectively make needed updates to the Department of Defense Grant and Agreement Regulations (DoDGARs). One purpose of the updating is to implement Office of Management and Budget (OMB) guidance to Federal agencies on administrative requirements, cost principles, and audit requirements applicable to Federal grants, cooperative agreements, and other assistance instruments (2 CFR part 200). Another purpose is to provide greater uniformity in the content and organization of DoD grants and cooperative agreements made by approximately 100 offices located throughout the nation and abroad.

The regulatory action in this NPRM contributes to the first of those purposes by implementing provisions of the OMB guidance on the minimum content that Federal agencies' awards must include. It also contributes to the second of those purposes by:

- Establishing additional requirements for uniform content, beyond the minimum identified in the guidance; and
- Specifying a standard format for organizing the content of DoD Component awards to all types of entities, including entities other than those addressed in the OMB guidance.

2. Legal Authorities for the Regulatory Action

There are two statutory authorities for this NPRM:

- 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.

*B. Summary of the Major Provisions of the Regulatory Action*

The proposed part 1120 is organized into seven subparts, each of which

addresses a major element or subelement of the standard award format that the part establishes. Those elements and subelements of the standard award format are the:

- Award cover pages (addressed in subpart A of the proposed part).
- Award-specific terms and conditions (addressed in subpart B).
- General terms and conditions (addressed in subpart C), the four subelements of which (addressed in subparts D through G) are the: (i) Preamble; (ii) administrative requirements; (iii) national policy requirements; and (iv) programmatic requirements.

Sections I.B.1 through I.B.7 of this **SUPPLEMENTARY INFORMATION** section describe these elements and subelements of the standard award format. Sections I.B.1 and I.B.2 describe the award cover pages and award-specific terms and conditions, respectively. Section I.B.3 describes the general terms and conditions as a whole and sections I.B.4 through 7 separately describe its four subelements.

1. Award Cover Pages (Division I of the Award)

Subpart A of the proposed part 1120 addresses the content of the award cover pages and their location in Division I of the award. The cover pages will contain basic information about the award or modification to the award, such as the name of the DoD awarding office and recipient, the award number, and amount. The cover pages list what else the award includes—such as the scope of work, any award-specific terms and conditions, and the general terms and conditions—and state where those other portions of the award are located. The cover pages will be signed by the DoD grants officer and, for a bilaterally executed award or modification, an official the recipient entity authorizes to sign on its behalf.

For grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, Subpart A thereby implements OMB guidance in 2 CFR 200.210(a) on the general information contained in awards. The proposed Subpart A is broader than the OMB guidance in that it: (1) Specifies use of the format for awards to for-profit and other entities not addressed in the guidance; and (2) requires DoD Components' to include more information elements than the guidance specifies. The proposed Subpart A varies in three instances from the guidance by:

- Providing more detailed explanations of some of the information

elements listed in § 200.210(a) of the OMB guidance, to help clarify exactly what information a DoD Component is to include—*e.g.*, in the case of each funding amount, whether it is the federal share, the non-federal share, or the sum of the two.

- Providing clarification related to the guidance in 2 CFR 200.210(a)(15) on the inclusion in each award of the recipient's indirect cost rate for the award. The proposed subpart A requires a DoD Component to include only the indirect cost rate that is in effect at the time of the initial award. The reason is to avoid unnecessary burdens and costs of having to update information on cover pages throughout the life of a multi-year award to a for-profit or other entity that has post-determined final indirect cost rates and rates that vary from one fiscal year to the next (note that a post-determined final rate for a recipient's fiscal year is set after the end of that fiscal year, based on actual costs).

- Excepting a DoD Component from the requirement to include the indirect cost rate on an award if the recipient of the award affirms that it treats its rate as proprietary information, as many for-profit and nonprofit entities do.

The proposed subpart A also provides for later development of a standard DoD form for the cover pages, by mandating use of the form when there is one. A standard form will make it easier for both recipients and DoD post-award administrators to locate basic information they need in different DoD awarding offices' awards.

2. Award-Specific Terms and Conditions (Division II of the Award)

Subpart B of the proposed 2 CFR part 1120 provides for DoD Components' inclusion of award-specific terms and conditions in Division II of their awards. Depending upon specific conditions pertinent to a particular award, an awarding office may need award-specific terms and conditions to supplement or supersede some of the general terms and conditions. The proposed Subpart B does not prescribe how to organize the content of the award-specific terms and conditions, nor does it specify standard wording for any of them. For grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, the proposed Subpart B implements, without variation, OMB guidance in 2 CFR 200.210(c) as it applies to award-specific terms and conditions.

### 3. General Terms and Conditions (Division III of the Award)

Subpart C of the proposed part 1120 addresses the general terms and conditions as a whole and their location in Division III of the award. The subpart also provides for publicly posting the general terms and conditions, rather than providing them to each recipient with its award. Publicly posting them should make it easy for a potential proposer to review the requirements with which it would have to comply if its proposal was successful. For grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, the subpart implements OMB guidance in 2 CFR 200.210(b), without variation.

### 4. Preamble to the General Terms and Conditions (Subdivision A of Division III of the Award)

Subpart D of the proposed part 1120 requires a DoD Component to include a preamble for each set of general terms and conditions that it maintains and specify its location as Subdivision A of the general terms and conditions in Division III of the award. The subpart requires the preamble to a set of general terms and conditions to contain important information about that set, such as the types of awards and recipient entities to which it applies. The only portion of the OMB guidance that relates to the proposed subpart D is the guidance in 2 CFR 200.111(b) on the need for a recipient, if a significant portion of its employees who are working under a Federal agency's award are not fluent in English, to provide a translation of the award into the language or languages with which its employees are familiar. The proposed subpart D clarifies that guidance by stating that a recipient must translate award content only to the extent that its compliance with award requirements depends on employees who are not fluent in English being able to read and comprehend that content.

### 5. Administrative Requirements Portion of the General Terms and Conditions (Subdivision B of Division III of the Award)

The proposed subpart E of part 1120 specifies what the administrative requirements portion of the general terms and conditions covers, where it is located within the award, and which DoDGARs part or parts governs the administrative requirements for awards to different types of recipients. It also encourages a DoD Component that is constructing general terms and

conditions for awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes to incorporate the administrative requirements by reference to the portions of the DoDGARs that provide standard wording for that portion of the terms and conditions. For awards to those types of recipients, subpart E also implements OMB guidance in 2 CFR 200.210(b)(1)(i), without variation.

### 6. National Policy Requirements Portion of the General Terms and Conditions (Subdivision C of Division III of the Award)

The proposed content of subpart F of part 1120 provides direction to DoD Components concerning the scope, source, and location within the award format of national policy requirements. As the proposed subpart E does for administrative requirements, subpart F encourages a DoD Component to incorporate the standard wording that the DoDGARs provides for commonly applicable national policy requirements into general terms and conditions by reference. For awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, subpart F implements OMB guidance in 2 CFR 200.210(b)(1)(ii), without variation.

### 7. Programmatic Requirements Portion of the General Terms and Conditions (Subdivision D of Division III of the Award)

The proposed subpart G of part 1120: (1) Clarifies what the programmatic requirements segment of the general terms and conditions includes, in relation to the content of the administrative and national policy requirements; (2) provides some specific examples of programmatic requirements; and (3) specifies the location of those requirements as Subdivision D of the general terms and conditions in Division III of the award. For awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, subpart G implements, without variation, OMB guidance in 2 CFR 200.210(c) as it applies to program-specific requirements included in general terms and conditions.

#### C. Costs and Benefits

The primary benefit of the regulatory action proposed in this NPRM results from its standardization of the location of basic information about the award and requirements for recipients contained in award terms and conditions across awards made by about

100 DoD Component awarding offices. With that standardization, recipients, auditors, DoD post-award administrators, and others who use the content of DoD awards should be able to find what they need more quickly and easily within the 15,000 award actions per year that the awarding offices issue.

Another benefit of the proposed regulatory action is the encouragement for DoD Components to incorporate DoD-wide standard wording for administrative and national policy requirements into their general terms and conditions by reference. This approach makes it easier for recipients and others who use the terms and conditions to much more quickly identify how each awarding office's general terms and conditions vary from the DoD standard wording.

The administrative burdens and associated costs to recipients due to the regulatory action proposed in this NPRM are primarily those resulting from the Governmentwide guidance to agencies that OMB issued in 2 CFR part 200. The few variations from the guidance noted in sections I.B.1 and I.B.4 of this **SUPPLEMENTARY INFORMATION** section are minor, and any slight effect they will have on burdens and associated costs should be to reduce them.

## II. Regulatory Analysis

*Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review"*

Executive Order 12866, as supplemented by Executive Order 13563, directs each Federal agency to: Propose regulations only after determining that benefits justify costs; tailor regulations to minimize burdens on society, consistent with achieving regulatory objectives; maximize net benefits when selecting among regulatory approaches; to the extent feasible, specify performance objectives rather than the behavior or manner of compliance; and seek the views of those likely to be affected before issuing a notice of proposed rulemaking, where feasible and appropriate. The Department of Defense has determined that a regulatory implementation that includes a standard format for organizing the content of DoD Components' grant and cooperative agreement awards will maximize long-term benefits in relation to costs and burdens for recipients of those awards. This rule has been designated a "significant regulatory action" under section 3(f) of Executive Order 12866,

although not an economically significant one. Accordingly, the rule has been reviewed by OMB.

#### *Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that a Federal agency prepare a budgetary impact statement before issuing a rule that includes any Federal mandate that may result in the expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in 1995 dollars, updated annually for inflation. In 2015, that inflation-adjusted amount in current dollars is approximately \$146 million. The Department of Defense has determined that this proposed regulatory action will not result in expenditures by State, local, and tribal governments, or by the private sector, of that amount or more in any one year.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires an agency that is proposing a rule to provide a regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Department of Defense certifies that this proposed regulatory action will not have a significant economic impact on substantial number of small entities beyond any impact due to provisions of it that implement OMB guidance at 2 CFR part 200.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; 5 CFR part 1320, appendix A.1) (PRA), the Department of Defense has determined that there are no new collections of information contained in this proposed regulatory action.

#### *Executive Order 13132, "Federalism"*

Executive Order 13132 establishes certain requirements that an agency must meet when it proposes a regulation that has Federalism implications. This proposed regulatory action does not have any Federalism implications.

#### **List of Subjects in 2 CFR Part 1120**

Business and Industry, Colleges and universities, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Small business, State and local governments.

■ Accordingly, 2 CFR chapter XI, subchapter C is proposed to be amended by adding part 1120 to read as follows:

### **PART 1120—FORMAT FOR DOD GRANT AND COOPERATIVE AGREEMENT AWARDS**

Sec.

- 1120.1 Purpose of this part.
- 1120.2 Applicability of this part.
- 1120.3 DoD Component implementation.
- 1120.4 Elements and subelements of the standard award format in relation to the organization of this part.

#### **Subpart A—Award Cover Pages**

- 1120.100 Purpose of the award cover pages.
- 1120.105 Content of the award cover pages.
- 1120.110 Use of alternative to DoD form.

#### **Subpart B—Award-specific Terms and Conditions**

- 1120.200 Purpose and inclusion of award-specific terms and conditions.
- 1120.205 Organization and wording of award-specific terms and conditions.

#### **Subpart C—General Terms and Conditions**

- 1120.300 Purpose of general terms and conditions.
- 1120.305 Requirement for general terms and conditions.
- 1120.310 Use of plain language.
- 1120.315 Availability of general terms and conditions.

#### **Subpart D—Preamble to the General Terms and Conditions**

- 1120.400 Requirement to include a preamble.
- 1120.405 Content of the preamble.

#### **Subpart E—Administrative Requirements Portion of the General Terms and Conditions**

- 1120.500 Scope of administrative requirements.
- 1120.505 Location of administrative requirements in the standard award format.
- 1120.510 Sources of administrative requirements.
- 1120.515 Incorporation of administrative requirements into general terms and conditions by reference.

#### **Subpart F—National Policy Requirements Portion of the General Terms and Conditions**

- 1120.600 Scope of national policy requirements.
- 1120.605 Location of national policy requirements in the standard award format.
- 1120.610 Source of national policy requirements.
- 1120.615 Incorporation of national policy requirements into general terms and conditions by reference.

#### **Subpart G—Programmatic Requirements Portion of the General Terms and Conditions**

- 1120.700 Scope of programmatic requirements.
- 1120.705 Location of programmatic requirements in the standard award format.
- 1120.710 Examples of programmatic requirements.

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

#### **§ 1120.1 Purpose of this part.**

This part of the DoD Grant and Agreement Regulations (DoDGARs) establishes a standard format for DoD Components' grant and cooperative agreement awards. It thereby makes the content easier for a recipient to locate in different DoD Components' awards.

#### **§ 1120.2 Applicability of this part.**

- (a) *To whom it applies.* This part:
  - (1) Sets forth requirements for DoD Components that award grants and cooperative agreements.
  - (2) Does not impose requirements on recipients of DoD Components' awards.
- (b) *To what awards it applies.* This part applies to grants and cooperative agreements, other than Technology Investment Agreements (TIAs), awarded to any type of recipient entity.

#### **§ 1120.3 DoD Component implementation.**

Each DoD Component that awards grants or cooperative agreements must:

- (a) Conform the format of its awards to the standard format established by this part no later than [18 months after the effective date of the final rule].

- (b) Update electronic systems it maintains for generating awards within 18 months of the issuance of a new or updated DoD form for the award cover pages, in order to implement that form in those systems, unless it has an approved deviation in accordance with § 1120.110.

#### **§ 1120.4 Elements and subelements of the standard award format in relation to the organization of this part.**

(a) The standard award format has three major elements that are designated as Divisions I through III of the award.

(1) The first major element of the standard award format is comprised of the award cover pages. It is designated as Division I of the award.

(2) The second major element is comprised of any award-specific terms and conditions. That element is designated as Division II of the award.

(3) The last of the three major elements of the standard award format is comprised of the general terms and conditions. That element is designated as Division III of the award. It has four subelements that are designated as Subdivisions A through D of the general terms and conditions.

(i) The first subelement of the general terms and conditions is the preamble, which is designated as Subdivision A.

(ii) The second subelement of the general terms and conditions is comprised of terms and conditions addressing administrative requirements. That subelement is designated as

Subdivision B of the general terms and conditions.

(iii) The third subelement of the general terms and conditions is comprised of terms and conditions addressing national policy requirements. That subelement is

designated as Subdivision C of the general terms and conditions.

(iv) The last of the four subelements of the general terms and conditions is comprised of any programmatic requirements that apply to awards using those general terms and conditions.

That subelement is designated as Subdivision D of the general terms and conditions.

(b) This part has seven subparts. Each subpart addresses one major element or subelement of the standard award format, as shown in the following table:

Major element or subelement of the standard award format	Subpart of this part
(1) Division I—Award cover pages .....	Subpart A.
(2) Division II—Award-specific terms and conditions, if any .....	Subpart B.
(3) Division III—General terms and conditions, comprised of four subelements .....	Subpart C.
(i) Subdivision A—The preamble to the general terms and conditions .....	Subpart D.
(ii) Subdivision B—General terms and conditions for administrative requirements .....	Subpart E.
(iii) Subdivision C of the—General terms and conditions for national policy requirements .....	Subpart F.
(iv) Subdivision D—General terms and conditions for programmatic requirements, if any .....	Subpart G.

### Subpart A—Award Cover Pages

#### § 1120.100 Purpose of the award cover pages.

The award cover pages comprise the portion of each DoD Component award or modification to an award that the DoD Component transmits to the recipient when it makes the award or modification. It:

(a) Contains basic information about the award or modification and the recipient, as described in § 1120.105;

(b) Is signed by a DoD grants officer; and

(c) Also is signed by the recipient's authorized organizational representative if the award or modification is a bilateral action that is to be signed on behalf of both the DoD Component and recipient.

#### § 1120.105 Content of the award cover pages.

The award cover pages of each DoD Component award or modification:

(a) Must include, as a minimum, the following information about the award or modification:

(1) The name of the DoD Component awarding office that made the award or modification.

(2) The award number and, if the action is a modification, the modification number.

(3) The type of award—*e.g.*, grant or cooperative agreement.

(4) The type of award action—*e.g.*, new award, funding modification, or administrative (non-funding) modification. For an administrative modification, the award cover pages should include a brief description of the purpose of the modification (*e.g.*, a no-cost extension of the end date of the period of performance).

(5) For a new award or funding modification:

(i) A brief description of the project or program supported by the award.

(ii) The amount of the obligation or deobligation of Federal funds due to the current action and any accompanying change in the total amount of cost

sharing or matching required under the award.

(iii) The cumulative amounts of Federal funds and any corresponding non-Federal share obligated to date (*i.e.*, the sums of the amounts of the current action and the cumulative amounts of prior obligations and deobligations).

(iv) The total amount of the project costs in the currently approved budget through the end of the period of performance, the Federal share of that amount, and the non-Federal share.

(v) The total value of the award; the Federal share of that total value (which includes Federal funding obligated to date; future incremental funding actions; and options for which amounts have been predetermined, whether or not they have been exercised yet); and the non-Federal share of that total value (*i.e.*, total cost sharing or matching required under the award).

(vi) A table such as the following may be helpful in clearly presenting the information described in paragraphs (a)(5)(ii) through (vi) of this section:

	Federal funds	Corresponding non-Federal share	Total amount
(A) Obligated or deobligated this action.			
(B) Cumulative obligations to date, including this and previous actions.			
(C) Planned project costs in the currently approved budget through the end of the period of performance, to include any future incremental funding obligations.			
(D) Total value, which includes any unexercised options for which amounts were established in the award.			

(6) The obligation date (*i.e.*, the date of the grants officer's signature) and, if different, the effective date.

(7) The start date and current end date of the period of performance.

(8) The statutory authority or authorities under which the award or modification was made.

(9) The number and title of the program listed in the Catalog of Federal

Domestic Assistance under which the award or modification was made.

(10) For a new award (or, as needed, in a modification that amends any of the following information):

(i) Whether the project or program under the award is research and development (R&D). This information is needed by auditors performing single audits of recipients because the OMB

guidance to the auditors treats all Federal agencies' R&D programs as a single group (or "cluster") of programs for audit sampling purposes (see the Single Audit Act requirements implemented in subpart E of 2 CFR part 1128 and FMS Article V in appendix E to part 1128).

(ii) What the award includes in addition to the cover pages—*i.e.*, the:

(A) Scope of work or other appropriate content to specify the goals and objectives of the project or program supported by the award;

(B) Approved budget; and

(C) General, and any award-specific, terms and conditions of the award.

(iii) Where the other portions of the award listed in paragraph (a)(10)(ii) of this section are located. A DoD Component generally should indicate in the award cover pages that the award includes the general terms and conditions by reference and specify their location (see § 1120.315), rather than transmit them in their entirety with each award.

(iv) The order of precedence in the event of conflict among the general and any award-specific terms and conditions and other potential sources of requirements (*e.g.*, Federal statutes).

(v) The name of, and contact information for, the individual or office in the DoD responsible for post-award administration of the award. If there are multiple individuals and offices for different post-award functions (*e.g.*, payments and property administration), the award cover pages should provide information about each.

(vi) The name of, and contact information for, the DoD Component's program manager or other point of contact for programmatic matters.

(b) Must include, as a minimum, the following information about the recipient entity:

(1) The recipient's unique entity identifier required for its registration in the System for Award Management (SAM). Currently, that is the Dun and Bradstreet Data Universal Numbering System (DUNS) number.

(2) The recipient's business name and address, which must be the legal business or "doing business as" name and physical address in SAM at the time of award corresponding to the recipient's unique entity identifier.

(3) The name and title of the recipient's authorized representative, either the individual who signed the application or proposal on behalf of the recipient entity or another individual designated by that entity.

(4) The name of the recipient's Project or Program Director (PD) or Principal Investigator (PI) and his or her organization, if different from the name of the recipient organization. If there are multiple PD's or PI's, the name and organization of each should be included.

(5) The indirect cost rate in effect at the start of the performance period for the award, which generally is a Governmentwide rate negotiated by the recipient's cognizant agency for indirect

costs. However, this requirement does not apply—*i.e.*, the award cover pages need not include the recipient's indirect cost rate—if the recipient entity affirms that it treats its indirect cost rate as proprietary information.

(c) May also include, as applicable, elements such as:

(1) A statement that the award can be amended only by a grants officer. The statement might also explain how amendments are issued.

(2) Information about any planned, future incremental funding or options for which amounts were pre-determined.

#### **§ 1120.110 Use of alternative to DoD form.**

(a) A DoD Component may use something other than a DoD form as its award cover pages only if:

(1) There is not currently any DoD form for the award cover pages; or

(2) The DoD Component obtains approval for a deviation from the requirement to use a DoD form from the Office of the Assistant Secretary of Defense for Research and Engineering, in accordance with the procedures specified in 32 CFR 21.340.

(b) If a DoD Component does not use a DoD form for its award cover pages, as described in paragraph (a) of this section, its award cover pages must include all information specified in § 1120.105.

### **Subpart B—Award-specific Terms and Conditions**

#### **§ 1120.200 Purpose and inclusion of award-specific terms and conditions.**

A DoD Component must include with each award, for transmission to the recipient, any terms and conditions needed to communicate requirements specific to the individual award as distinct from the more broadly applicable requirements in the general terms and conditions. For a modification to an award, only changes to previously transmitted terms and conditions must be included.

#### **§ 1120.205 Organization and wording of award-specific terms and conditions.**

DoD Components should organize and word award-specific terms and conditions to make them as clear and easy to understand as possible for the benefit of recipients, award administrators, auditors, and others who may need to use them. The DoDGARs specify neither a standard organization nor standard wording for award-specific terms and conditions.

### **Subpart C—General Terms and Conditions**

#### **§ 1120.300 Purpose of general terms and conditions.**

The general terms and conditions comprise the portion of the award with requirements that apply to a class of awards (*e.g.*, awards under a particular program or type of program activity, such as research or education, or for a class of recipients, such as for-profit entities).

#### **§ 1120.305 Requirement for general terms and conditions.**

Each DoD Component must establish at least one set of general terms and conditions. A DoD Component may have more than one set, as it deems appropriate to reflect differences in its award terms and conditions across different programs, classes of recipients, or types of activity.

#### **§ 1120.310 Use of plain language.**

(a) DoD Components must use plain language in:

(1) General terms and conditions of grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Those awards are subject to the DoDGARs provisions in:

(i) 2 CFR parts 1128 through 1138, the appendices to which provide standard wording for general terms and conditions addressing administrative requirements. That standard wording uses personal pronouns.

(ii) 2 CFR part 1122, the appendices to which provide standard wording for general terms and conditions addressing commonly applicable national policy requirements. That standard wording also uses personal pronouns.

(2) The national policy requirements in Subdivision B of general terms and conditions of grants and cooperative agreements to for-profit entities, which also are subject to 2 CFR part 1122.

(b) Although the DoDGARs currently do not provide standard wording for terms and conditions addressing administrative requirements for use in awards to for-profit entities, DoD Components are strongly encouraged to use plain language and personal pronouns in their terms and conditions of those other awards. The DoDGARs provisions that specify the administrative requirements to incorporate into those terms and conditions are listed in § 1120.510(b).

#### **§ 1120.315 Availability of general terms and conditions.**

(a) A DoD Component that issues a program announcement under which

grants or cooperative agreements may be awarded must maintain on the Internet the general terms and conditions for those awards if:

- (1) The distribution of the program announcement is unlimited; and
- (2) The DoD Component anticipates making 10 or more awards per year using those general terms and conditions.

(b) Each DoD Component that maintains a set of general terms and conditions on the Internet must also maintain an archive of previous versions of that set at the same Internet location, for use by recipients, post-award administrators, auditors, and others. Each version must be labeled with its effective dates.

(c) If a DoD Component has a set of general terms and conditions that is not subject to the requirement in paragraph (a) of this section and the DoD Component chooses not to maintain that set on the Internet:

- (1) It must tell potential applicants or proposers in the program announcement, if there is one, how they may view or obtain a copy of the general terms and conditions; or
- (2) If there is no program announcement (e.g., if it is a noncompetitive program for which all recipients are known in advance), the DoD Component must provide the general terms and conditions to each recipient no later than the time of award.

#### **Subpart D—Preamble to the General Terms and Conditions**

##### **§ 1120.400 Requirement to include a preamble.**

Each DoD Component must include a preamble as Subdivision A of each set of general terms and conditions it maintains, to provide information to help recipients understand how to use those terms and conditions.

##### **§ 1120.405 Content of the preamble.**

The preamble for each set of general terms and conditions must include at least the following information elements, organized in the order shown:

(a) *Table of contents.* This should show the articles within each other subdivision of the general terms and conditions (Subdivisions B and C for administrative and national policy requirements and, if needed, Subdivision D for programmatic requirements).

(b) *Scope.* This element identifies the programs, types of awards, and types of recipient entities that are subject to the set of general terms and conditions.

(c) *Effective date.* This is the date on which the particular version of the set

of general terms and conditions became effective, which enables a recipient to easily distinguish it from any earlier or subsequent versions. The version date of each article within the general terms and conditions must be indicated in parentheses following the title of the article, to help a recipient identify the articles that changed from previous versions of the general terms and conditions.

(d) *English language.* The purpose of this element of the preamble is to implement OMB guidance in 2 CFR 200.111(b) by informing each recipient that:

- (1) It must translate any of the award content (including attachments to it and any material incorporated into the award by reference) into another language to the extent that the recipient's compliance with the award's terms and conditions depends upon a significant number of its employees who are not fluent in English being able to read and comprehend that content.
- (2) If it does translate any award content into another language, either as required by paragraph (d)(1) of this section or at its own initiative, the original award content in the English language will take precedence in the event of an inconsistency between the award requirements in the English and translated versions.

(e) *Plain language.* This section of the preamble is required when the general terms and conditions use personal pronouns, in accordance with § 1120.310. Its purpose is to inform recipients about the meanings of those personal pronouns.

(f) *Definitions.* Providing the definitions of words and phrases that are used in the general terms and conditions and defined in the DoDGARs is more helpful to recipients than referring them to the DoDGARs to find the definitions.

#### **Subpart E—Administrative Requirements Portion of the General Terms and Conditions**

##### **§ 1120.500 Scope of administrative requirements.**

The administrative requirements in an award are post-award and after-the-award requirements for recipients in the following subject matter areas:

- (a) Financial and program management, to include financial management system standards, payment, allowable costs, program and budget revisions, audits, cost sharing or matching, and program income.
- (b) Property administration, to include title vesting, property management system standards, and use

and disposition of tangible and intangible property.

(c) Recipient procurement procedures.

(d) Financial, programmatic, property, and other reporting.

(e) Records retention and access, remedies, claims and disputes, and closeout.

##### **§ 1120.505 Location of administrative requirements in the standard award format.**

As shown in the table in § 1120.4(b), the standard award format includes administrative requirements as Subdivision B of the general terms and conditions.

##### **§ 1120.510 Sources of administrative requirements.**

The source of administrative requirements is:

(a) Subchapter D of this chapter for grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Subchapter D provides a standard set of articles into which a DoD Component organizes the administrative requirements. It also provides standard wording for the general terms and conditions in those articles, as explained in the overview of subchapter D in 2 CFR part 1126.

(b) 32 CFR part 34 for grant and cooperative agreement awards to for-profit entities. That part of the DoDGARs specifies the administrative requirements for awards to those entities but does not provide standard articles or terms and conditions.

##### **§ 1120.515 Incorporation of administrative requirements into general terms and conditions by reference.**

(a) For awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, DoD Components are strongly encouraged to construct the portion of their general terms and conditions addressing administrative requirements by:

(1) Incorporating the standard wording of each article of administrative requirements provided in subchapter D of this chapter (the standard wording of the articles is in the appendices to 2 CFR parts 1128 through 1138) into those general terms and conditions by reference; and

(2) Stating any variations from that standard wording (e.g., any sections or paragraphs that the DoD Component adds, revises, or omits, consistent with the DoDGARs prescription for use of the standard wording).

(b) Incorporating that standard wording into general terms and conditions by reference, rather than



including the full text of each article of the general terms and conditions, will make it easier for those who must use terms and conditions of multiple DoD Components' awards (e.g., recipients, DoD Components' post-award administrators, and auditors) to quickly identify how each Component's general terms and conditions differ from the DoD standard wording.

#### **Subpart F—National Policy Requirements Portion of the General Terms and Conditions**

##### **§ 1120.600 Scope of national policy requirements.**

National policy requirements, as defined in 2 CFR 1122.2, are requirements:

(a) That are prescribed by a statute, Executive order, policy guidance issued by the Executive Office of the President, or regulation that specifically refer 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 are outside subject matter areas covered by administrative requirements, as described in § 1120.500.

##### **§ 1120.605 Location of national policy requirements in the standard award format.**

As shown in the table in § 1120.4(b), the standard award format includes national policy requirements as Subdivision C of the general terms and conditions.

##### **§ 1120.610 Source of national policy requirements.**

The source of national policy requirements is 2 CFR part 1122.

##### **§ 1120.615 Incorporation of national policy requirements into general terms and conditions by reference.**

For the same reason given in § 1120.515(b), DoD Components are strongly encouraged to construct the portion of their general terms and conditions addressing national policy requirements for awards to all types of recipient entities, including for-profit entities, by:

(a) Incorporating the standard wording of each article of national policy requirements provided in the appendices to 2 CFR part 1122 into those general terms and conditions by reference; and

(b) Stating any variations from that standard wording (e.g., any added, omitted, or revised paragraphs, based on which national policy requirements apply to programs and recipients for which the general terms and conditions are used).

#### **Subpart G—Programmatic Requirements Portion of the General Terms and Conditions**

##### **§ 1120.700 Scope of programmatic requirements.**

A requirement is most appropriately included in the programmatic requirements portion of the general terms and conditions if it:

(a) Is not in one of the subject matter areas covered by the administrative requirements in Subdivision B of the general terms and conditions, as described in § 1120.500.

(b) Does not meet the criteria in § 1120.600 for a national policy requirement.

(c) Broadly applies to awards using the general terms and conditions. Requirements that apply to relatively few of those awards are more appropriately included in the award-specific terms and conditions of the individual awards to which they apply.

(d) Is expected to be in effect for the foreseeable future, rather than for a limited period of time. For example, a requirement in an annual appropriations act that applies specifically to funding made available by that act is better addressed through the award-specific terms and conditions of awards or modifications to which it applies.

##### **§ 1120.705 Location of programmatic requirements in the standard award format.**

As shown in the table in § 1120.4(b), the standard award format includes programmatic requirements as Subdivision D of the general terms and conditions.

##### **§ 1120.710 Examples of programmatic requirements.**

Examples of provisions appropriately included as programmatic requirements in Subdivision D of the general terms and conditions include:

(a) Requirements for recipients to acknowledge the DoD Component's support in publications of results of the projects or programs performed under awards.

(b) Requirements for recipients to promptly alert the DoD Component if they develop any information in the course of performing the projects or programs under their awards that, in their judgment, might adversely affect national security if disclosed.

(c) Reservation of the Government's right to use non-Federal personnel in any aspect of post-award administration of awards, with appropriate nondisclosure requirements on those personnel to protect sensitive information about recipients or the

projects or programs supported by their awards.

Dated: October 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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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:** Proposed rule.

**SUMMARY:** This notice of proposed rulemaking (NPRM) is the fourth of a sequence of six NPRM documents in this issue of the **Federal Register**. This NPRM proposes to add 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 in areas such as nondiscrimination, environmental protection, and live organisms. The new part also provides standard wording of terms and conditions for national policy requirements that apply generally to DoD programs and awards.

**DATES:** To ensure that they can be considered in developing the final rule, comments must be received at either the Web site or mailing address indicated below by February 6, 2017.

**ADDRESSES:** You may submit comments identified by docket number, or by Regulatory Information Number (RIN) and title, by either of the following methods:

*The Web site:* <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

*Mail:* Department of Defense, Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Box 24, Alexandria, VA 22350-1700.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from the public is to make the