

Rules and Regulations

Federal Register

Vol. 72, No. 122

Tuesday, June 26, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD-2006-OS-0137]

RIN 0790-AH97

2 CFR Part 1125

32 CFR Parts 21, 22, 25, 32, 33, 34 and 37

Nonprocurement Debarment and Suspension

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is revising the DoD Grant and Agreement Regulations (DoDGARs) to adopt and implement Office of Management and Budget (OMB) guidance on nonprocurement suspension and debarment and to make needed technical corrections. DoD is adopting and implementing the OMB guidance in a new part in title 2 of the CFR, the Governmentwide title recently established for OMB guidance and agencies' implementing regulations on grants and agreements. The Department also is removing the common rule on nonprocurement suspension and debarment that is in 32 CFR, Chapter I, Subchapter C, since the common rule is superseded by the new part implementing the OMB guidance. Adopting and implementing the OMB guidance and removing the common rule completes the DoD actions that the OMB guidance specifies. This regulatory action also is the first step toward relocating all of the DoDGARs to 2 CFR.

DATES: This final rule is effective on August 27, 2007 without further action. Submit comments by July 26, 2007 on any unintended changes this action makes in DoD policies and procedures for nonprocurement debarment and suspension. All comments on

unintended changes will be considered and, if warranted, DoD will revise the rule.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

Mark Herbst, (703) 588-1377 or mark.herbst@osd.mil.

SUPPLEMENTARY INFORMATION:

Governmentwide Context for This DoD Regulatory Action

This DoD regulatory action is part of a Governmentwide initiative to streamline and simplify the Federal Government's policy framework for grants and agreements. As part of this initiative, OMB established a new title 2 of the CFR for grants and agreements [69 FR 26276, May 11, 2004], a step recommended by an interagency work group helping to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107). The primary purpose of the title is to co-locate OMB circulars and other guidance on grants and agreements with Federal agencies' regulations implementing those OMB issuances.

The **Federal Register** notice establishing 2 CFR also stated that OMB would issue in that new title Governmentwide guidance on nonprocurement debarment and suspension in a form that agencies could adopt by regulation. That approach enables a Federal agency to implement the guidance without having to repeat the full text, as it must do with a common rule. Instead, the agency's

brief adopting regulation just needs to state any agency-specific additions and clarifications to the guidance. The approach is similar to the one that OMB and the agencies have used to implement the Governmentwide cost principles in OMB Circulars A-21, A-87, and A-122, and the audit guidance in OMB Circular A-133.

This new approach has two major advantages. First, it will reduce the volume of Federal regulations. We estimate that today's regulatory action reduces the volume of the DoDGARs by about eight percent. Second, the brief adopting part makes it easy for the affected public to identify an agency's additions and clarifications to the Governmentwide policies and procedures, something that was difficult with the common rule.

DoD Implementation of the OMB Guidance on Nonprocurement Suspension and Debarment

DoD is taking three steps in this regulatory action to implement the OMB guidance. First, DoD is establishing Chapter XI, "Department of Defense," in Subtitle B of 2 CFR, where all of the DoDGARs ultimately will be located. Second, it is adding a new part 1125 to Chapter XI, as the brief part to adopt the OMB guidance and state DoD-specific additions and clarifications. Third, it is removing 32 CFR part 25, the part containing the common rule on nonprocurement debarment and suspension that the OMB guidance supersedes.

Technical Corrections to the DoD Grant and Agreement Regulations

The technical corrections that DoD is making to the DoDGARs through this regulatory action accomplish two purposes. First, they replace the references to 32 CFR part 25 that appeared in other DoDGARs parts with references to the OMB guidance, as implemented by the new 2 CFR part 1125 (see amendment numbers d, 3.b, 3.d-f, 3.i, 5.b-f, 6.b, 7.b-d, and 8.b-d following this preamble). Second, they correct typesetting errors made to some DoDGARs parts in an August 2005 **Federal Register** notice [70 FR 49460] (see amendment numbers 2.c, 3.c, 3.e-h, and 8.c following this preamble).

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553) agencies generally

offer interested parties the opportunity to comment on proposed regulations before they become effective. However, in this case, the substance of the regulation already has been subject to comment on two occasions. The first occasion was through DoD's adoption of the update to the Governmentwide nonprocurement debarment and suspension common rule that recast the regulation in plain English and made other needed changes. DoD proposed that regulation for comment on January 23, 2002 [67 FR 3265], before adopting the final rule on November 26, 2003 [68 FR 65534]. As permitted by OMB, DoD made a few agency-specific additions and clarifications to the Governmentwide wording when it adopted the common rule.

The second opportunity to comment was through OMB's conversion of the substance of the Governmentwide common rule to guidance suitable for agency adoption. OMB issued the guidance in interim final form on August 31, 2005 [70 FR 51863], with an opportunity for comment. It then issued the final guidance on November 15, 2006 [71 FR 66431].

Adopting 2 CFR part 1125 as a direct final rule constitutes an administrative simplification that makes no substantive changes to DoD policy or procedures for nonprocurement debarment and suspension. The new part includes the same agency-specific additions and clarifications to the OMB guidance that DoD made when it adopted the Governmentwide common rule in 2003. The substance of this final rule therefore is unchanged from what was adopted previously with opportunity for comment.

Accordingly, the Department finds that the solicitation of public comments on this direct final rule is unnecessary and that "good cause" exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective on August 27, 2007 without further action.

Invitation To Comment

Although it is not necessary, DoD is providing an opportunity for comment. In doing so, we are not seeking to revisit substantive issues that were resolved during the adoption of the final common rule in 2003. Rather, we specifically invite comments only on any unintended substantive changes that the new 2 CFR part 1125 makes relative to DoD policy and procedures in 32 CFR part 25, the part that it is supersedes. If any comments identifying unintended substantive changes are received by July 26, 2007, the Department will make any amendments to the final rule that are warranted.

Executive Order 12866

This rule is not significant because the replacement of the common rule with OMB guidance and a brief DoD adopting regulation does not make any changes in current policies and procedures.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

2 CFR Part 1125

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

32 CFR Part 21

Grant programs, Reporting and recordkeeping requirements.

32 CFR Part 22

Accounting, Grant programs, Grant programs—education, Reporting and recordkeeping requirements.

32 CFR Part 25

Administrative practice and procedure, Grant programs, Loan programs, Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 33

Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

32 CFR Part 34

Accounting, Government property, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 37

Accounting, administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

■ Accordingly, under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, the Department of Defense amends the Code of Federal Regulations, Title 2, Subtitle B, and Title 32, Chapter I, Subchapter C, to read as follows:

Title 2—Grants and Agreements

■ 1. Chapter XI, consisting of part 1125, to Subtitle B is added to read as follows:

Chapter XI—Department of Defense

PART 1125—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

1125.10 What does this part do?

1125.20 Does this part implement the OMB guidance in 2 CFR part 180 for all DoD nonprocurement transactions?

1125.30 Does this part apply to me?

1125.40 What policies and procedures must I follow?

Subpart A—General

1125.137 Who in the Department of Defense may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1125.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1125.332 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of DoD Officials Regarding Transactions

1125.425 When do I check to see if a person is excluded or disqualified?

1125.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subpart E—H [Reserved]

Subpart I—Definitions

1125.930 Debarring official (DoD supplement to Governmentwide definition at 2 CFR 180.930).

1125.937 DoD Component.
1125.1010 Suspending official (DoD supplement to Governmentwide definition at 2 CFR 180.1010).

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1125.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Defense (DoD) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Defense to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 1125.20 Does this part implement the OMB guidance in 2 CFR part 180 for all DoD nonprocurement transactions?

This part implements the OMB guidelines in 2 CFR part 180 for most DoD nonprocurement transactions. However, it does not implement the guidelines as they apply to prototype projects under the authority of Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160), as amended. The Director of Defense Procurement and Acquisition Policy maintains a DoD issuance separate from this part that addresses section 845 transactions.

§ 1125.30 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a “covered transaction” (see Subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970, as supplemented by Subpart B of this part), other than a section 845 transaction described in § 1125.20;

(b) Respondent in a DoD Component’s nonprocurement suspension or debarment action;

(c) DoD Component’s debarment or suspension official; or

(d) DoD Component’s grants officer, agreements officer, or other official authorized to enter into a nonprocurement transaction that is a covered transaction.

§ 1125.40 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through I of 2 CFR part 180, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 180, this part supplements eight sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 180.135	§ 1125.137	Who in DoD may grant an exception for an excluded person to participate in a covered transaction.
(2) 2 CFR 180.220	§ 1125.220	Which lower-tier contracts under a nonprocurement transaction are covered transactions.
(3) 2 CFR 180.330	§ 1125.332	What method a participant must use to communicate requirements to a lower-tier participant.
(4) 2 CFR 180.425	§ 1125.425	When a DoD awarding official must check to see if a person is excluded or disqualified.
(5) 2 CFR 180.435	§ 1125.437	What method a DoD official must use to communicate requirements to a participant.
(6) 2 CFR 180.930	§ 1125.930	Which DoD officials are debarring officials.
(7) 2 CFR 180.1010	§ 1125.1010	Which DoD officials are suspending officials.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through I of 2 CFR 180 that is not listed in paragraph (b) of this section, DoD policies and procedures are the same as those in the OMB guidance.

Subpart A—General

§ 1125.137 Who in the Department of Defense may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Defense, the Secretary of Defense, Secretary of a Military Department, Head of a Defense Agency, Head of the Office of Economic Adjustment, and Head of the Special Operations Command have the authority to grant an exception to let an excluded person participate in a

covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 1125.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180), the Department of Defense does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1125.332 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant in a covered transaction must include a term or condition in any lower-tier covered transaction into which you enter, to require the participant of that transaction to—

(a) Comply with Subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

Subpart D—Responsibilities of DoD Officials Regarding Transactions

§ 1125.425 When do I check to see if a person is excluded or disqualified?

In addition to the four instances identified in the OMB guidance at 2 CFR 180.425, you as a DoD Component official must check to see if a person is excluded or disqualified before you obligate additional funding (*e.g.*, through an incremental funding action) for a pre-existing grant or cooperative agreement with an institution of higher education, as provided in 32 CFR 22.520(e)(5).

§ 1125.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

You as a DoD Component official must include a term or condition in each covered transaction into which you enter, to communicate to the participant the requirements to—

(a) Comply with subpart C of 2 CFR part 180, as supplemented by Subpart C of this part; and

(b) Include a similar term or condition in any lower-tier covered transactions into which the participant enters.

Subpart E–H—[Reserved]

Subpart I—Definitions

§ 1125.930 Debarring official (DoD supplement to Governmentwide definition at 2 CFR 180.930).

DoD Components' debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as debarring officials for procurement contracts.

§ 1125.937 DoD Component

In this part, DoD Component means the Office of the Secretary of Defense, a

Military Department, a Defense Agency, a DoD Field Activity, or any other organizational entity of the Department of Defense that is authorized to award or administer grants, cooperative agreements, or other nonprocurement transactions.

§ 1125.1010 Suspending official (DoD supplement to Governmentwide definition at 2 CFR 180.1010).

DoD Components' suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as suspending officials for procurement contracts.

Title 32—National Defense

PART 21—DOD GRANTS AND AGREEMENTS—GENERAL MATTERS

■ 1. The authority citation for part 21 continues to read as follows:

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

■ 2. Section 21.330 is amended by revising paragraph (a) to read as follows:

§ 21.330 How are the DoDGARs published and maintained?

(a) The DoD publishes the DoDGARs in the Code of Federal Regulations (CFR) and in a separate internal DoD document (DoD 3210.6–R).

(1) The location of the DoDGARs in the CFR currently is in transition. They are moving from Chapter I, Subchapter C, Title 32, to a new location in Chapter XI, Title 2 of the CFR. During the transition, there will be some parts of the DoDGARs in each of the two titles.

(2) The DoD document is divided into parts, subparts, and sections, to parallel the CFR publication. Cross references within the DoD document are stated as CFR citations (*e.g.*, a reference to section 21.215 in part 21 would be to 32 CFR

21.215), which also is how they are stated in the CFR publication of the DoDGARs.

* * * * *

■ 3. Section 21.565 is revised to read as follows:

§ 21.565 Must DoD Components' electronic systems accept Data Universal Numbering System (DUNS) numbers?

The DoD Components must comply with paragraph 5.e of the Office of Management and Budget (OMB) policy directive entitled, "Requirement for a DUNS number in Applications for Federal Grants and Cooperative Agreements."⁶ Paragraph 5.e requires electronic systems that handle information about grants and cooperative agreements (which, for the DoD, include Technology Investment Agreements) to accept DUNS numbers. Each DoD Component that awards or administers grants or cooperative agreements must ensure that DUNS numbers are accepted by each such system for which the DoD Component controls the system specifications. If the specifications of such a system are subject to another organization's control and the system can not accept DUNS numbers, the DoD Component must alert that organization to the OMB policy directive's requirement for use of DUNS numbers with a copy to: Director for Basic Sciences, ODDR&E, 3040 Defense Pentagon, Washington, DC 20301–3040.

■ 4. Appendix A to part 21 is revised to read as follows:

BILLING CODE 5001–06–P

⁶ This OMB policy directive is available at the Internet site http://www.whitehouse.gov/omb/grants/grants_docs.html.

Appendix A to Part 21—Instruments to
Which DoDGARs Portions Apply

DoDGARs . . .	which addresses . . .	applies to . . .
Part 21 (32 CFR part 21), all but Subparts D and E	The Defense Grant and Agreement Regulatory System and the DoD Grant and Agreement Regulations	“awards,” which are grants, cooperative agreements, technology investment agreements (TIAs), and other nonprocurement instruments subject to one or more parts of the DoDGARs.
Part 21 (32 CFR part 21), Subpart D	Authorities and responsibilities for assistance award and administration	grants, cooperative agreements, and TIAs.
Part 21 (32 CFR part 21), Subpart E	DoD Components’ information reporting requirements	grants, cooperative agreements, TIAs, and other nonprocurement instruments subject to reporting requirements in 31 U.S.C. chapter 61.
Part 22 (32 CFR part 22)	DoD grants officers’ responsibilities for award and administration of grants and cooperative agreements	grants and cooperative agreements other than TIAs.
Part 26 (32 CFR part 26)	Governmentwide drug-free workplace requirements	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definition of “award” at 32 CFR 26.605.
Part 28 (32 CFR part 28)	Governmentwide restrictions on lobbying	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definitions of “Federal grant” and “Federal cooperative agreement” at 32 CFR 28.105.
Part 32 (32 CFR part 32)	Administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations	grants, cooperative agreements other than TIAs, and other assistance included in “award,” as defined in 32 CFR 32.2. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 33 (32 CFR part 33)	Administrative requirements for grants and agreements with State and local governments	grants, cooperative agreements other than TIAs, and other assistance included in “grant,” as defined in 32 CFR 33.3. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 34 (32 CFR part 34)	Administrative requirements for grants and agreements with for-profit organizations	grants and cooperative agreements other than TIAs (“awards,” as defined in 32 CFR 34.2). Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 37 (32 CFR part 37)	Agreements officers’ responsibilities for award and administration of TIAs	TIAs. Note that this part refers to portions of DoDGARs parts 32, 33, and 34 that apply to TIAs.
Part 1125 (2 CFR part 1125)	Governmentwide debarment and suspension requirements	nonprocurement generally, including grants, cooperative agreements, TIAs, and any other instruments that are covered transactions under OMB guidance in 2 CFR 180.210 and 180.215, as implemented by 2 CFR part 1125, except acquisition transactions to carry out prototype projects (see 2 CFR 1125.20).

PART 22—DOD GRANTS AND AGREEMENTS—AWARD AND ADMINISTRATION

■ 5. The authority citation for part 22 continues to read as follows:

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

■ 6. Section 22.100 is amended by revising paragraph (b)(1) to read as follows:

§ 22.100 Purpose, relation to other parts, and organization.

* * * * *

(b) * * *

(1) The DoD implementation, in 2 CFR part 1125, of OMB guidance on nonprocurement debarment and suspension.

* * * * *

■ 7. Section 22.315 is amended by:

■ a. Revising paragraph (a)(2) to read as follows; and

■ b. Revising footnotes 2, 3, and 4 to read as follows:

§ 22.315 Merit-based, competitive procedures.

* * * * *

(a) * * *

(2) In accordance with that OMB policy directive, DoD Components also must post on the Internet any notice under which domestic entities may submit proposals, if the distribution of the notice is unlimited. DoD Components are encouraged to simultaneously publish the notice in other media (e.g., the **Federal Register**), if doing so would increase the likelihood of its being seen by potential proposers. If a DoD Component issues a specific notice with limited distribution (e.g., for national security considerations), the notice need not be posted on the Internet.

* * * * *

² This OMB policy directive is available at the Internet site http://www.whitehouse.gov/omb/grants/grants_docs.html (the link is "Final Policy Directive on Financial Assistance Program Announcements").

³ This OMB policy directive is available at the Internet site http://www.whitehouse.gov/omb/grants/grants_docs.html (the link is "Office of Federal Financial Management Policy Directive on Use of Grants.Gov FIND").

⁴ This OMB policy directive is available at the Internet site http://www.whitehouse.gov/omb/grants/grants_docs.html (the link is "Use of a Universal Identifier by Grant Applicants").

§ 22.405 [Amended]

■ 8. Section 22.405, paragraph (a) is amended by revising "Governmentwide policy, stated at 32 CFR 25.110(a), to do business only with responsible persons" to read "Governmentwide policy to do

business only with responsible persons, which is stated in OMB guidance at 2 CFR 180.125(a) and implemented by the Department of Defense in 2 CFR part 1125".

■ 9. Section 22.420 is amended by revising paragraph (c)(1) to read as follows:

§ 22.420 Pre-award procedures.

* * * * *

(c) * * *

(1) Is not identified in the Governmentwide Excluded Parties List System (EPLS) as being debarred, suspended, or otherwise ineligible to receive the award. In addition to being a requirement for every new award, note that checking the EPLS also is a requirement for subsequent obligations of additional funds, such as incremental funding actions, in the case of pre-existing awards to institutions of higher education, as described at 32 CFR 22.520(e)(5). The grants officer's responsibilities include (see the OMB guidance at 2 CFR 180.425 and 180.430, as implemented by the Department of Defense at 2 CFR 1125.425) checking the EPLS for:

(i) Potential recipients of prime awards; and

(ii) A recipient's principals (as defined in OMB guidance at 2 CFR 180.995, implemented by the Department of Defense in 2 CFR part 1125), potential recipients of subawards, and principals of those potential subaward recipients, if DoD Component approval of those principals or lower-tier recipients is required under the terms of the award (e.g., if a subsequent change in a recipient's principal investigator or other key person would be subject to the DoD Component's prior approval under 32 CFR 32.25(c)(2), 33.30(d)(3), or 34.15(c)(2)(i)).

* * * * *

■ 10. Section 22.520 is amended by revising:

■ a. Paragraphs (c)(3) and (4);

■ b. Paragraph (d)(1);

■ c. Paragraphs (e)(1), (3), (4), (5) introductory text, (5)(i), and (5)(ii); and

■ d. Paragraph (f)(2)

§ 22.520 Campus access for military recruiting and Reserve Officer Training Corps (ROTC).

* * * * *

(c) * * *

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

to campuses and to students that is provided to any other employer; or

(4) Access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(i) Names, addresses, and telephone listings.

(ii) Date and place of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(d) *Policy*—(1) *Applicability to cooperative agreements*. As a matter of DoD policy, the restrictions of 10 U.S.C. 983, as implemented by 32 CFR part 216, apply to cooperative agreements, as well as grants.

(2) * * *

(e) *Grants officers' responsibilities*. (1) A grants officer shall not award any grant or cooperative agreement to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified as being ineligible on the Governmentwide Excluded Parties List System (EPLS). The cause and treatment code on the EPLS indicates the reason for an institution's ineligibility, as well as the effect of the exclusion. Note that OMB guidance in 2 CFR 180.425 and 180.430, as implemented by the Department of Defense at 2 CFR part 1125, require a grants officer to check the EPLS prior to determining that a recipient is qualified to receive an award.

(2) * * *

(3) A grants officer shall include the following award term in each grant or cooperative agreement with an institution of higher education (note that this requirement does not flow down and that recipients are not required to include the award term in subawards):

"As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

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

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

(C) The Secretary of a Military Department or Secretary of Homeland Security from

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

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

If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award."

(4) If an institution of higher education refuses to accept the award term in paragraph (e)(3) of this section, the grants officer shall:

(i) Determine that the institution is not qualified with respect to the award. The grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director for Accession Policy, Office of the Deputy Under Secretary of Defense for Military Personnel Policy (ODUSD(MPP)), 4000 Defense Pentagon, Washington, DC 20301-4000. This will allow ODUSD(MPP) to decide whether to initiate an evaluation of the institution

under 32 CFR part 216, to determine whether it is an institution that has a policy or practice described in paragraph (c) of this section.

(5) With respect to any pre-existing award to an institution of higher education that currently is listed on the EPLS pursuant to a determination under 32 CFR part 216, a grants officer:

(i) Shall not obligate additional funds available to the DoD for the award. A grants officer therefore must check the EPLS before approving an incremental funding action or other additional funding for any pre-existing award to an institution of higher education. The grants officer may not obligate the additional funds if the cause and treatment code indicates that the reason for an institution's EPLS listing is a determination under 32 CFR part 216 that institutional policies or practices restrict campus access of military recruiters or ROTC.

(ii) Shall not approve any request for payment submitted by such an institution (including payments for costs already incurred).

(iii) * * *

(f) * * *

(2) Awarding offices in DoD Components that may be identified from data in the Defense Assistance Awards Data System (see 32 CFR 21.520 through 21.555) as having awards with such institutions for which post-award payment administration was not delegated to ONR. The ONR is to alert those offices to their responsibilities under paragraph (e)(5) of this section.

■ 11. Section 22.710 is amended by revising the introductory text to read as follows:

§ 22.710 Assignment of grants administration offices.

In accordance with the policy stated in § 22.705(b), the DoD offices (referred to in this part as "grants administration offices") that are assigned responsibility for performing field administration services for grants and cooperative agreements are (see the "Federal Directory of Contract Administration Services (CAS) Components"¹⁰ for specific addresses of administration offices):

* * * * *

■ 12. Section 22.715 is amended by revising paragraph (a)(4) to read as follows:

§ 22.715 Grants administration office functions.

* * * * *

(a) * * *

(4) Issuing timely management decisions, in accordance with DoD Directive 7640.2, "Policy for Follow-up on Contract Audit Reports,"¹³ on single audit findings referred by the OIG, DoD, under DoD Directive 7600.10, "Audits of States, Local Governments, and Non-Profit Organizations."¹⁴

* * * * *

■ 13. Appendix B to part 22 is revised to read as follows:

BILLING CODE 5001-06-P

¹⁰ The "Federal Directory of Contract Administration Services (CAS) Components" may be accessed through the Defense Contract Management Agency homepage at <http://www.dcmamail>.

¹⁴ See footnote 13 to § 22.715(a)(4).

**Appendix B to Part 22—Suggested
Award Provisions for National Policy
Requirements that Often Apply**

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
<p>Nondiscrimination</p> <p>By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:</p> <p>a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195.</p> <p>b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.</p> <p>c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.</p> <p>d. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.</p>	<p>Grants, cooperative agreements, and other financial assistance included at 32 CFR 195.2(d).</p> <p>Grants, cooperative agreements, and other prime awards defined at 40 CFR 60-1.3 as "Federally assisted construction contract."</p> <p>Grants, cooperative agreements, and other financial assistance included at 20 U.S.C. 1682.</p> <p>Grants, cooperative agreements, and other awards defined at 45 CFR 90.4 as "Federal financial assistance."</p>	<p>Any.</p> <p>Any.</p> <p>Any [for sex discrimination, 32 CFR 196.235 excepts an entity controlled by a religious organization, if not consistent with the organization's religious tenets].</p> <p>Any.</p>	<p>Any.</p> <p>Awards under which construction work is to be done.</p> <p>Any educational program or activity receiving Federal financial assistance.</p> <p>Any.</p>	<p>32 CFR part 195.6 requires grants officer to obtain recipient's assurance of compliance. It also requires the recipient to flow down requirements to subrecipients.</p> <p>The grants officer should inform recipients that 41 CFR 60-1.4(b) prescribes a clause that recipients must include in federally assisted construction awards and subawards [60-1.4(d) allows incorporation by reference]. This requirement also is at 32 CFR 33.36(l)(3) and in Appendices A to 32 CFR part 32 and 32 CFR part 34.</p> <p>32 CFR 196.115 requires assurance of compliance. The inclusion of subrecipients in the definition of "recipient" at 32 CFR 196.105 requires recipient to flow down requirements to subrecipients.</p> <p>45 CFR 90.4 requires that recipient flow down requirements to subrecipients [definition of "recipient" at 45 CFR 90.4 includes entities to which assistance is extended indirectly, through another recipient].</p>

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
e. On the basis of handicap, in:				
1. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.	Grants, cooperative agreements, and other awards included in "Federal financial assistance" definition at 32 CFR 56.3(b).	Any.	Any.	32 CFR 56.9(b) requires grants officer to obtain recipient's written assurance of compliance and specifies what the assurance includes. Note that requirements flow down to subawards ["recipient," defined at 32 CFR 56.3(g), includes entities receiving assistance indirectly through other recipients].
2. The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).	Grant or loan.	Any.	Construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel.	
Live Organisms By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:				
a. For human subjects, the Common Federal Policy for the Protection of Human Subjects, codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by the Department of Defense at 32 CFR part 219.	Any.	Any.	Research, development, test, or evaluation involving live human subjects, with some exceptions [see 32 CFR part 219].	32 CFR 219.103 requires each recipient to have a Federally approved, written assurance of compliance [it may be HHS-approved, on file with HHS; DoD-approved, on file with a DoD Component; or may need to be obtained by the grants officer for the specific award].

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
<p>b. For animals:</p> <p>1. Rules on animal acquisition, transport, care, handling, and use in 9 CFR parts 1-4; Department of Agriculture rules implementing the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156), and guidelines in the National Academy of Sciences (NAS) "Guide for the Care and Use of Laboratory Animals" (1996), including the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals in Appendix D to the guide.</p> <p>2. Prohibitions on the purchase or use of dogs or cats for certain medical training purposes, in Section 8019 (10 U.S.C. 2241 note) of the Department of Defense Appropriations Act, 1991 (Pub. Law 101-511).</p> <p>3. Rules of the Departments of Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.</p>	Any.	Any.	Research, experimentation, or testing involving the use of animals.	Prior to making an award under which animal-based research, testing, or training is to be performed, DoD Directive 3216.1 ¹ requires administrative review of the proposal by a DoD veterinarian trained or experienced in laboratory animal science and medicine, as well as a review by the recipient's Institutional Animal Care and Use Committee.
	Any.	Any.	Use of DoD appropriations for training on treatment of wounds.	
	Any.	Any.	Activities that may involve or impact wildlife and plants.	

¹ Electronic copies may be obtained at the Washington Headquarters Services Internet site <http://www.dtic.mil/whs/directives>. Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
<p>Debarment and Suspension The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the Department of Defense in 2 CFR part 1125. The recipient also agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the recipient enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.</p> <p>Hatch Act The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.</p> <p>Environmental Standards By signing this agreement or accepting funds under this agreement, the recipient assures that it will:</p> <p>a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32.</p>	Any nonprocurement transaction [see "covered transaction" as specified in Subpart B of 2 CFR part 180, especially sections 180.210 and 180.215]	All but foreign governments, foreign governmental entities, and others excluded at 2 CFR 180.215(a)	Any	
	Grants or loans.	State and local governments.	All but employees of educational or research institutions supported by State; political subdivision thereof; or religious, philanthropic, or cultural organization.	
	Any nonprocurement transaction [see 40 CFR 32.1110].	Any.	Any.	Executive Order 11738 establishes additional responsibilities for grants officers.

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
<p>b. Identify to the awarding agency any impact this award may have on:</p> <p>1. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.</p> <p>2. Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas.</p>	Any.	Any.	Any actions that may affect the environment.	<p>The Council on Environmental Quality's regulations for implementing NEPA are at 40 C.F.R. parts 1500-1508. Executive Order 11514 [3 CFR, 1966-1970 Comp., p. 902], as amended by Executive Order 11991, sets policies and procedures for considering actions in the U.S. Executive Orders 11988 [3 CFR, 1977 Comp., p. 117] and 11990 [3 CFR, 1977 Comp., p. 121] specify additional considerations, when actions involve floodplains or wetlands, respectively.</p>
	Grants, cooperative agreements, and other "financial assistance" (see 42 U.S.C. 4003).	Any.	Awards involving construction, land acquisition or development, with some exceptions [see 42 U.S.C. 4001, et. seq.].	<p>The grants officer should inform the recipient that 42 U.S.C. 4012a prohibits awards for acquisition or construction in flood-prone areas (Federal Emergency Management Agency publishes lists of such areas in the Federal Register), unless recipient has required insurance. If action is in a floodplain, Executive Order 11988 [3 CFR, 1977 Comp., p. 117] specifies additional pre-award procedures for Federal agencies. Recipients are to apply requirements to subawards ("financial assistance," defined at 42 U.S.C. 4003, includes indirect Federal assistance).</p>

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
3. Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.), concerning protection of U.S. coastal resources.	Grants, cooperative agreements, and other "Federal assistance" [see 16 U.S.C. 1456(d)].	State and local governments, interstate and other regional agencies.	Awards that may affect the coastal zone.	16 U.S.C. 1456(d) prohibits approval of projects inconsistent with a coastal State's approved management program for the coastal zone.
4. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.	Grants, cooperative agreements, and other "financial assistance" (see 16 U.S.C. 3502).	Any.	Awards that may affect barriers along the Atlantic and Gulf coasts and Great Lakes' shores.	16 U.S.C. 3504-3505 prohibit new awards for actions within Coastal Barrier System, except for certain purposes. Requirements flow to subawards (16 U.S.C. 3502 includes indirect assistance as "financial assistance").
5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).	Any.	Any.	Awards that may affect existing or proposed element of National Wild and Scenic Rivers system.	
6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).	Any.	Any.	Construction in any area with aquifer that the EPA finds would create public health hazard, if contaminated.	42 U.S.C. 300h-3(e) precludes awards of Federal financial assistance for any project that the EPA administrator determines may contaminate a sole-source aquifer so as to threaten public health.
<u>Drug-Free Workplace</u> The recipient agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).	Any financial assistance, including any grant or cooperative agreement [see "award" as broadly defined at 32 CFR 26.605]	Any	Any, except where inconsistent with international obligations of the U.S. or the laws or regulations of a foreign government [see 32 CFR 26.110]	

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
<p>National Historic Preservation The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 C.F.R. part 800 and Executive Order 11593 [3 CFR, 1971-1975 Comp., p. 559].</p>	Any.	Any.	Any construction, acquisition, modernization, or other activity that may impact a historic property.	36 CFR part 800 requires grants officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.
<p>Officials Not to Benefit No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.</p>	Grants, cooperative agreements, and other "agreements."	Any.	Any.	
<p>Preference for U.S. Flag Carriers Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.</p>	Any.	Any.	Any agreement under which international air travel may be supported by U.S. Government funds.	

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
<p>Cargo Preference The recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.</p>	Grants, cooperative agreements, and other awards included in 46 CFR 381.7.	Any.	Any award where possibility exists for ocean transport of items procured or obtained by or on behalf of the recipient, or any of the recipient's contractors or subcontractors.	46 CFR 381.7 requires grants officers to include appropriate clauses in award documents. It also requires recipients to include appropriate clauses in contracts using U.S. Government funds under agreements, where ocean transport of procured goods is possible [e.g., see clause at 46 CFR 381.7(b)].
<p>Military Recruiters [Grants officers shall include the exact award provision specified at 32 CFR 22.520]</p>	Grants and cooperative agreements.	Domestic institution of higher education (see 32 CFR 22.520).	Any.	
<p>Relocation and Real Property Acquisition The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.</p>	Grants, cooperative agreements, and other "Federal financial assistance" [see 49 CFR 24.2(j)].	"State agency" as defined in 49 CFR part 24 to include persons with authority to acquire property by eminent domain under State law.	Any project that may result in real property acquisition or displacement where State agency hasn't opted to certify to Dept. of Transportation in lieu of providing assurance.	42 U.S.C. 4630 and 49 CFR 24.4, as implemented by DoD at 32 CFR part 259, requires grants officers to obtain recipients' assurance of compliance.

PART 25—[REMOVED]

- 14. Under the authority of 5 U.S.C. 301, 32 CFR part 25 is removed.

PART 32—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

- 15. The authority citation for part 32 continues to read as follows:

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

- 16. Section 32.2 is amended by revising the introductory text and the definition of “suspension” to read as follows:

§ 32.2 Definitions.

The following are definitions of terms used in this part. Grants officers are cautioned that terms may be defined differently in this part than they are in other parts of the DoD Grant and Agreement Regulations, because this part implements OMB Circular A-110 and uses definitions as stated in that Circular. In such cases, the definition given in this section applies to the term as it is used in this part, and the definition given in other parts applies to the term as it is used in those parts. For example, “suspension” is defined in this section to mean temporary withdrawal of Federal sponsorship under an award, but is defined in the part of the DoD Grant and Agreement Regulations on nonprocurement suspension and debarment (2 CFR part 1125, which implements OMB guidance at 2 CFR part 180) to be an action taken to exclude a person from participating in a grant, cooperative agreement, or other covered transaction (see definition at 2 CFR 180.1015).

* * * * *

Suspension. An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a participant under 2 CFR part 1125.

* * * * *

- 17. Section 32.13 is revised to read as follows:

§ 32.13 Debarment and suspension.

DoD Components and recipients shall comply with the policy and procedural requirements in the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180), as implemented by the Department of

Defense in 2 CFR part 1125. Those policies and procedures restrict subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 32.44 [Amended]

- 18. Paragraph (d) of § 32.44 is amended in the third sentence by revising “contracts with certain parties are restricted by the DoD implementation, in 32 CFR part 25, of E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), “Debarment and Suspension” to read “contracts with certain parties are restricted by the DoD implementation, in 2 CFR part 1125, of OMB guidance on nonprocurement debarment and suspension (2 CFR part 180)”.

§ 32.62 [Amended]

- 19. Paragraph (d) of section 32.62 is amended by revising “debarment and suspension under 32 CFR part 25” to read “debarment and suspension under 2 CFR part 1125”.
- 20. Paragraph 8 of Appendix A to part 32 is revised to read as follows:

Appendix A to Part 32—Contract Provisions

* * * * *

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance at 2 CFR 180.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System accessible on the Internet at www.epls.gov contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

PART 33—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

- 21. The authority citation for part 33 continues to read as follows:

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

§ 33.35 [Amended]

- 22. Section 33.35 is amended by revising “comply with the requirements of Subpart C, 32 CFR part 25, including the restrictions on entering into a covered transaction with” to read “comply with the requirements of OMB

guidance in Subpart C, 2 CFR part 180, as implemented by the Department of Defense in 2 CFR part 1125. Those requirements include restrictions on entering into a covered transaction with”.

PART 34—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH FOR-PROFIT ORGANIZATIONS

- 23. The authority citation for part 34 continues to read as follows:

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

- 24. Section 34.2 is amended by revising the definition of “suspension” to read as follows:

§ 34.2 Definitions.

* * * * *

Suspension. An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a participant under 2 CFR part 1125.

* * * * *

§ 34.52 [Amended]

- 25. Paragraph (d) of section 34.52 is amended by revising “debarment and suspension under 32 CFR part 25” to read “debarment and suspension under 2 CFR part 1125”.

- 26. Paragraph 7 of Appendix A to part 34 is revised to read as follows:

Appendix A to Part 34—Contract Provisions

* * * * *

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance at 2 CFR 180.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System accessible on the Internet at www.epls.gov contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

PART 37—TECHNOLOGY INVESTMENT AGREEMENTS

■ 27. The authority citation for part 37 continues to read as follows:

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

■ 28. Section 37.130 is amended by revising paragraph (b)(1) to read as follows:

§ 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

* * * * *

(b) * * *

(1) Part 1125 (2 CFR part 1125) on nonprocurement debarment and suspension, which applies because it covers nonprocurement instruments in general;

* * * * *

■ 29. Appendix D to part 37 is amended by revising the introductory text and paragraphs A, B, B.1, B.3, and B.5 to read as follows:

Appendix D to Part 37—What Common National Policy Requirements May Apply and Need To Be Included in TIAs?

Whether your TIA is a cooperative agreement or another type of assistance transaction, as discussed in Appendix B to this part, the terms and conditions of the agreement must provide for recipients' compliance with applicable Federal statutes and regulations. This appendix lists some of the more common requirements to aid you in identifying ones that apply to your TIA. The list is not intended to be all-inclusive, however, and you may need to consult legal counsel to verify whether there are others that apply in your situation (e.g., due to a provision in the appropriations act for the specific funds that you are using or due to a statute or rule that applies to a particular program or type of activity).

A. Certifications

One requirement that applies to all TIAs currently requires you to obtain a certification at the time of proposal. That requirement is in a Governmentwide common rule about lobbying prohibitions, which is implemented by the DoD at 32 CFR part 28. The prohibitions apply to all financial assistance. Appendix A to 32 CFR part 22 includes a sample provision that you may use, to have proposers incorporate the certification by reference into their proposals.

B. Assurances That Apply to All TIAs

DoD policy is to use a certification, as described in the preceding paragraph, only for a national policy requirement that specifically requires one. The usual approach to communicating other national policy requirements to recipients is to incorporate them as award terms or conditions, or assurances. Appendix B to 32 CFR part 22 lists national policy requirements that commonly apply to grants and cooperative

agreements. It also has suggested language for assurances to incorporate the requirements in award documents. Of those requirements, the following six apply to all TIAs:

1. Requirements concerning debarment and suspension in the OMB guidance in 2 CFR part 180, as implemented by the DoD at 2 CFR part 1125. The requirements apply to all nonprocurement transactions.

* * * * *

3. Prohibitions on discrimination on the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*). These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients performing a part of the substantive research program (as opposed to suppliers from whom recipients purchase goods or services). For further information, see item a. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

* * * * *

5. Prohibitions on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). They apply to all financial assistance and require flow down to subrecipients. For further information, see item e.1. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

* * * * *

■ 30. Appendix E to part 37 is amended by revising paragraph B.2 to read as follows:

Appendix E to Part 37—What Provisions May a Participant Need To Include When Purchasing Goods or Services Under a TIA?

* * * * *

B. * * *

2. *Debarment and suspension.* A contract award with an amount expected to equal or exceed \$25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance in 2 CFR 180.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System accessible on the Internet at www.epls.gov contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

* * * * *

Dated: June 18, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07-3086 Filed 6-25-07; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapters I and III

[Docket No.: FAA-2004-17168]

Review of Existing Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on existing regulations.

SUMMARY: The FAA is notifying the public of the outcome of our periodic review of existing regulations. This notice summarizes the public comments we received and our responses to them. This action is part of our effort to make our regulatory program more effective and less burdensome.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Office of Rulemaking, ARM-23, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7320.

SUPPLEMENTARY INFORMATION:

Background

Under section 5 of Executive Order 12866, Regulatory Planning and Review, each agency must develop a program to periodically review its existing regulations to determine if they should be changed or eliminated (58 FR 51735, October 4, 1993). The purposes of the review are to make the agency's regulatory program more effective in achieving the regulatory objectives and less burdensome. The FAA conducts its review on a three-year cycle.

On February 25, 2004, we published a notice in the **Federal Register** asking the public to tell us which regulations we should amend, remove, or simplify (69 FR 8575). The notice stated that we would consider the comments and adjust our regulatory priorities consistent with our statutory responsibilities. The notice also stated we would publish a summary of the comments and an explanation of how we would act on them.

Summary of Comments

In response to the February 2004 notice, we received 97 comments from 30 different commenters. For comparison, we received 476 comments during the previous review and 82 comments the time before that. We received comments from citizens, private pilots, commercial pilots, and representatives of interest groups and commercial entities. The interest groups that filed comments include the Air Transport Association, the Allied Pilots