

to be a grant or cooperative agreement. Therefore, at its option, a recipient or subrecipient may consider all of its lower-tier instruments 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 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 DoD award.

Dated: July 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–16409 Filed 8–18–20; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

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

[DOD–2016–OS–0055]

RIN 0790–AJ50

DoD Grant and Agreement Regulations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule is the last in a sequence of six documents in this issue of the **Federal Register** that collectively establish for DoD grants and cooperative agreements an updated interim implementation of Government wide 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). It removes two existing DoDGARs parts and revises four others to conform them with the 11 parts of the DoDGARs preceding this one in this section of this **Federal Register**.

DATES: This rule is effective October 19, 2020.

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

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Final Rule

As explained in the Supplementary Information section of the first of the sequence of six final rules in this section of this **Federal Register**, these rules collectively make a major portion of the updates to the Department of Defense Grant and Agreement Regulations (DoDGARs) that are needed in order to implement Office of Management and Budget (OMB) guidance at 2 CFR part 200 and for other purposes. The first five rules in the sequence represent eleven new DoDGARs parts located in chapter XI of title 2 of the Code of Federal Regulations (CFR), which will ultimately be the location in the CFR for all of the DoDGARs. This sixth and final rule in the sequence includes conforming changes to the portion of the DoDGARs that will remain for an interim period in subchapter C of chapter I of title 32 of the CFR, which is where all of the DoDGARs were originally located. Subsequent rounds of DoDGARs updates to be proposed for comment in the future will relocate the content of the remaining portion of the DoDGARs from title 32 to title 2 of the CFR. The conforming changes in this rule are essential to ensuring internal consistency within the DoDGARs during this period of transition.

B. Revisions Implemented by This Rule

This final rule removes two of the eight DoDGARs parts currently located in subchapter C of chapter I of 32 CFR, revises four parts in that subchapter, and makes no changes to the other two parts. Specifically, it:

- Removes existing DoDGARs parts 32 and 33 (32 CFR parts 32 and 33). Part 32 of the DoDGARs (32 CFR part 32) was the CFR part in which DoD implemented OMB Circular A–110, which governed the administrative requirements for grant and cooperative agreement awards to institutions of higher education, hospitals, and other nonprofit organizations. Part 33 was the part in which DoD adopted the

Governmentwide common rule implementing OMB Circular A 102, which governed the administrative requirements for grant and cooperative agreement awards to States, local governments, and Indian tribal governments. Both Circulars A 110 and A 102 were superseded by Governmentwide guidance for grants and cooperative agreements that OMB issued at 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” DoD issued an interim final rule, pending updates to the DoDGARs to implement that OMB guidance, on December 19, 2014, at 2 CFR part 1103, to: (1) Direct DoD Components to conform requirements for recipients in their award terms and conditions with those in 2 CFR part 200.; and (2) grant a deviation from the administrative requirements in DoDGARs parts 32 and 33. The removal of DoDGARs parts 32 and 33 from title 32 of the CFR resulting from this final rule precludes any apparent conflict between the administrative requirements in parts 32 and 33 and the administrative requirements in the new DoDGARs parts addressing general terms and conditions.

- Revises existing DoDGARs parts 21, 22, 34, and 37 (32 CFR parts 21, 22, 34, and 37). to update outdated references and (2) eliminate internal inconsistencies between the portion of the DoDGARs that will remain in 32 CFR for an interim period and the new DoDGARs parts in chapter XI of 2 CFR that are included in the five final rules preceding this one in this **Federal Register**.

- Includes updates to references and language in 32 CFR parts 21, 22, 34, and 37) that are not related to the deletion of parts 32 and 33 or generally to the implementation of the guidance at 2 CFR part 200. Some of these changes are necessary to conform these parts of the DoDGARs in 32 CFR to statutes, regulations, or policy that were issued, revised, or repealed subsequent to the last revision of those parts.

C. Legal Authorities for the Regulatory Action

There are two statutory authorities for this rule:

- 10 U.S.C. 113, which establishes the Secretary of Defense as the head of the Department of Defense; 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.

Regulatory History

In December 2014 (79 FR 76047), DoD established an interim implementation of the final guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” published by the Office of Management and Budget (OMB) on December 26, 2013, in 2 CFR part 200 (Uniform Guidance—available at 78 FR 78589). DoD then published a Notice of Proposed Rulemaking (November 7, 2016 (81 FR 78442)) that proposed to remove two existing DoDGARs parts and revise four others in order to conform them with the 11 parts of the DoDGARs.

Comments and Responses

We received no public comments on the November 7, 2016 NPRM proposing these technical amendments. We have, however, updated § 21.530 to change the title, delete paragraph (a), and renumber the remaining paragraphs, to accommodate changes in organizational responsibilities subsequent to the publication of the NPRM.

II. Regulatory Analyses

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

A. Regulatory Planning and Review

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

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

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

Costs

DoD has found that this rule will not impose costs on the public because this final rule does not create new requirements or additional burdens to the public. Additionally, this rule removes two of the eight DoDGARs parts currently located in subchapter C of chapter I of 32 CFR, revises four parts in that subchapter, and makes no changes to the other two parts.

Cost Savings

DoD determined that these technical amendments to the DoD Grant and Agreement Regulations are necessary both to ensure consistency with the other rulemakings being published today and include the most current information available.

The primary benefit of this regulatory action is to allow DoD to implement the portions of OMB’s Governmentwide guidance on uniform administrative requirements, cost principles, and audit requirements that have an impact on its grant and cooperative agreement terms and conditions, rather than delaying these changes until all remaining parts of the DoDGARS are fully implemented in 2 CFR chapter XI.

However, one of the changes in these technical amendments, which is not directly related to the implementation of 2 CFR part 200, will narrow the impacted population. That change relates to the audit requirements for grants and agreements with for-profit entities, which are found in 32 CFR part 34. This change is modeled on administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations and increases the dollar threshold at which for-profit entities are required to receive an annual audit from \$500,000 to \$750,000 to parallel the threshold for States, local governments, Indian tribes, institutions of higher education, and nonprofit organizations located in 2 CFR 200.501. Though DoD anticipates that portion of the grant community will realize an annual cost saving, the fluid nature of the levels and source of funds, covered under these audit, requirements prohibits DoD from being able to calculate an annual cost saving.

Alternatives

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

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

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

C. Impact on Small Entities

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

D. Assistance for Small Entities

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires

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

F. Collection of Information

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

Federalism

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

List of Subjects in 32 CFR Parts 21, 22, 32, 33, 34, and 37

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

Accordingly, under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, 32 CFR chapter I, subchapter C is amended as follows:

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.

§ 21.215 [Amended]

- 2. Section 21.215 is amended by removing “Director of Defense Research and Engineering” and adding “Assistant Secretary of Defense for Research and Engineering (ASD(R&E))” in its place.
- 3. Section 21.220 is revised to read as follows:

§ 21.220 What publications are in the DGARS?

The DoD Grant and Agreement Regulations comprise the principal element of the DGARS. The ASD(R&E) also may publish DGARS policies and procedures in DoD instructions and other DoD publications, as appropriate.

- 4. Section 21.300 is amended by:

- a. In paragraph (a), removing “subpart D” and adding “subpart F” in its place; and
- b. Revising paragraph (b).

The revision reads as follows:

§ 21.300 What instruments are subject to the DoD Grant and Agreement Regulations (DoDGARS)?

* * * * *

- (b) Note that each portion of the DoDGARS identifies the types of instruments to which it applies.

* * * * *

§ 21.320 [Amended]

- 5. Section 21.320 is amended by removing paragraph (d).
- 6. Revise § 21.330 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).

(b) The location of the DoDGARS in the CFR currently is in transition. The regulations 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.

- (c) The DoD publishes updates to the DoDGARS in the **Federal Register** for public comment.

(d) A standing working group recommends revisions to the DoDGARS to the ASD(R&E). The ASD(R&E), Director of Defense Procurement, and each Military Department must be represented on the working group. Other DoD Components that make or administer awards may also nominate representatives. The working group meets when necessary.

- 7. Section 21.335 is amended by revising paragraph (b) to read as follows:

§ 21.335 Who can authorize deviations from the DoDGARS?

* * * * *

- (b) The ASD(R&E) or his or her designee must approve in advance any deviation for a class of awards. Note that, as described at 2 CFR 1126.3, OMB concurrence also is required for some class deviations from requirements included in awards to institutions of higher education, nonprofit

organizations, States, local governments, and Indian tribes.

- 8. Section 21.340 is amended by revising paragraph (a) to read as follows:

§ 21.340 What are the procedures for requesting and documenting deviations?

(a) DoD Components must submit copies of justifications and agency approvals for individual deviations and written requests for class deviations to: Principal Deputy Assistant Secretary of Defense for Research and Engineering, ATTN: Basic Research, 3030 Defense Pentagon, Washington, DC 20301–3030.

* * * * *

§ 21.505 [Amended]

- 9. Section 21.505 is amended by removing “domestic assistance programs” and adding “assistance programs” in its place.

§ 21.510 [Amended]

- 10. Section 21.510 is amended by:
 - a. Removing “OMB Circular A–89” and adding “OMB guidance at 2 CFR 200.202” in its place;
 - b. Removing “domestic assistance programs” and adding “assistance programs” in its place;
 - c. Removing “and maintaining the Federal Assistance Programs Retrieval System, a computerized data base of the information”; and
 - d. Removing footnote 4.
- 11. Section 21.515 is revised to read as follows:

§ 21.515 Who reports the information for the CFDA?

- (a) Each DoD Component that provides financial assistance must:

(1) Report to the Defense Assistance Awards Data System (DAADS) Administrator all new programs and changes as they occur or as the DoD Component submits its annual updates to existing CFDA information. DAADS is further described in §§ 21.520 through 21.555.

(2) Identify to the DAADS Administrator a point-of-contact who will be responsible for reporting the program information and for responding to inquiries related to it.

(b) The DAADS Administrator is the Department of Defense’s single liaison with whom DoD Components that collect and compile such program information work to report the information to OMB and GSA.

- 12. Section 21.520 is amended by revising paragraph (b) to read as follows:

§ 21.520 What are the purposes of the Defense Assistance Awards Data System (DAADS)?

* * * * *

(b) A basis for meeting Governmentwide requirements to report to *USASpending.gov* (or any successor site designated by OMB) and for preparing other recurring and special reports to the President, the Congress, the Government Accountability Office, and the public.

* * * * *

§ 21.525 [Amended]

■ 13. Section 21.525 is amended by removing “Deputy Director, Defense Research and Engineering (DDDR&E)” and adding “Principal Deputy Assistant Secretary of Defense for Research and Engineering (PDASD(R&E))” in its place.

■ 14. Section 21.530 is revised to read as follows:

§ 21.530 What are the responsibilities of the DAADS Administrator?

The DAADS Administrator, consistent with guidance issued by the PDASD(R&E):

(a) Processes DAADS information twice a month and prepares recurring and special reports using such information.

(b) Prepares, updates, and disseminates instructions for reporting information to the DAADS. The instructions are to specify procedures, formats, and editing processes to be used by DoD Components, including record layout, submission deadlines, media, methods of submission, and error correction schedules.

§ 21.535 [Amended]

■ 15. Section 21.535 is amended in paragraph (d) by removing “to the DIOR, WHS, at the address given in § 21.555(a). DIOR, WHS serves as the central point” and adding “to the DAADS administrator. The DAADS Administrator serves as the central point” in its place.

■ 16. Section 21.540 is amended by revising paragraphs (b) and (c) to read as follows:

§ 21.540 What are the duties of the DoD Components’ central points for the DAADS?

* * * * *

(b) Collect information required by the DAADS User Guide from those contracting activities, and report it to the DAADS Administrator, in accordance with §§ 21.545 through 21.555. Note that the DAADS User Guide, which a registered DAADS user may find at the Resources section of the DAADS website (<https://www.dmdc.osd.mil/daads/>), provides further information about required data elements and instructions for submitting data.

(c) Submit to the DAADS Administrator any recommended changes to the DAADS.

■ 17. Section 21.555 is revised to read as follows:

§ 21.555 When and how must DoD Components report to the DAADS?

DoD Components must report:

(a) Each obligating or deobligating action no later than 15 days after the date of the obligation or deobligation. Doing so enables DAADS to comply with the deadline in the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; 31 U.S.C. 6101 note) to report to the Governmentwide data system (*USASpending.gov*) established to implement requirements of that Act.

(b) Using a method and in a format permitted either by the DAADS User Guide described in § 21.540(b) or by agreement with the DAADS Administrator.

§ 21.565 [Amended]

■ 18. Section 21.565 is amended by:

■ a. Redesignating footnote number 6 as footnote number 2; and

■ b. Removing “Director for Basic Sciences, ODDR&E” and adding “Director for Basic Research, OASD(R&E)” in its place.

■ 19. Appendix A is revised to read as follows:

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

I. For each DoDGARs part that DoD already has adopted in chapter XI of title 2 of the Code of Federal Regulations (CFR), the following table summarizes the general subject area that the part addresses and its applicability. All of the DoDGARs ultimately will be located in chapter XI of 2 CFR.

DoDGARs . . .	Which addresses . . .	Applies to . . .
Part 1104	DoD’s interim implementation of the OMB guidance in 2 CFR part 200.	grants and cooperative agreements other than TIAs.
Part 1108 (2 CFR part 1108)	Definitions of terms	terms used throughout the DoDGARs in chapter XI of 2 CFR other than the portion containing regulations implementing specific national policy requirements that provide their own definitions of terms.
Part 1120 (2 CFR part 1120)	Award format	grants and cooperative agreements, other than TIAs.
Part 1122 (2 CFR part 1122)	National policy requirements general award terms and conditions.	grants and cooperative agreements other than TIAs. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
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 (<i>see</i> 2 CFR 1125.20).
Parts 1126, 1128, 1130, 1132, 1134, 1136, and 1138 (subchapter D of 2 CFR chapter XI).	Administrative Requirements Terms and Conditions for Cost-type Awards to Nonprofit and Governmental Entities.	cost-type grants and cooperative agreements other than TIAs. Portions of this subchapter apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.

II. For each DoDGARs part that will remain in subchapter C of chapter I of title 32 of the CFR, pending completion of the DoDGARs updating needed to fully implement OMB

guidance in 2 CFR part 200 and for other purposes, the following table summarizes the general subject area that the part addresses and its applicability. All of the substantive

content of these DoDGARs parts ultimately will be located in new parts in chapter XI of 2 CFR.

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 non-procurement 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. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
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 34 (32 CFR part 34)	Administrative requirements for grants and agreements with for-profit organizations.	grants and cooperative agreements other than TIAs (“award,” 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 other portions of DoDGARs that apply to TIAs.

PART 22—DoD GRANTS AND AGREEMENTS—AWARD AND ADMINISTRATION

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

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

■ 21. Section 22.100 is revised to read as follows:

§ 22.100 Purpose.

This part outlines grants officers’ and DoD Components’ responsibilities related to the award and administration of grants and cooperative agreements.

§ 22.220 [Amended]

■ 22. Section 22.220 is amended by:

- a. In paragraph (a)(2), removing “Director of Defense Research and Engineering (DDR&E)” and adding “Assistant Secretary of Defense for Research and Engineering (ASD (R&E))” in its place; and
- b. In paragraph (b), removing “DDR&E” everywhere it appears and adding “ASD (R&E)” in its place.

§ 22.310 [Amended]

■ 23. Section 22.310 is amended in paragraph (b)(1)(iii) by removing “Deputy Director, Defense Research and Engineering” and adding “Principal Deputy Assistant Secretary of Defense for Research and Engineering” in its place.

§ 22.315 [Amended]

■ 24. Section 22.315 is amended in paragraph (a)(3) by removing “<http://www.FedGrants.gov>” and adding “<http://www.Grants.gov>” in its place.

§ 22.325 [Removed]

■ 25. Section 22.325 is removed.

§ 22.405 [Amended]

■ 26. Section 22.405 is amended in paragraph (b) by removing “32 CFR 32.14, 33.12, or 34.4” and adding “32 CFR 34.4 for awards to for-profit organizations or as described in OMB guidance at 2 CFR 200.207 for awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes” in its place.

■ 27. Section 22.420 is amended by revising paragraphs (b)(1), (c)(1) introductory text, and (c)(1)(ii) to read as follows:

§ 22.420 Pre-award procedures.

* * * * *

(b) * * *

(1) Should the grants officer in a particular case decide that a pre-award credit report, audit, or survey is needed, he or she should consult first with the appropriate grants administration office (identified in § 22.710), and decide whether pre-existing surveys or audits of the recipient, such as those of the recipient’s internal control systems under OMB guidance in subpart F of 2 CFR part 200, will satisfy the need (see § 22.715(a)(1)).

* * * * *

(c) * * *

(1) Is not identified in the Exclusions area of the System for Award Management (SAM Exclusions) as being debarred, suspended, or otherwise ineligible to receive the award (SAM is

at www.sam.gov). In addition to being a requirement for every new award, note that checking SAM Exclusions 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 § 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 SAM Exclusions for:

* * * * *

(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.

* * * * *

■ 28. Section 22.505 is revised to read as follows:

§ 22.505 Purpose.

The purpose of this subpart is to supplement other regulations that implement national policy requirements, to the extent that it is necessary to provide additional guidance to DoD grants officers.

■ 29. Section 22.510 is amended by revising paragraph (b) to read as follows:

§ 22.510 Certifications, representations, and assurances.

* * * * *

(b) *Representations and assurances.* Many national policies, either in statute or in regulation, require recipients of grants and cooperative agreements to make representations or provide assurances (rather than certifications) that they are in compliance with the policies. Part 1122 of the DoDGARs (2 CFR part 1122) provides standard wording of general award terms and conditions to address several of the more commonly applicable national policy requirements. These terms and conditions may be used to obtain required assurances and representations for national policy matters covered in part 1122 at the time of award, which is as effective and more efficient and less administratively burdensome than obtaining them at the time of each proposal. If any other assurances or representations must be obtained at the time of proposal, grants officers should use the most efficient method for doing so—e.g., for a program that has a program announcement and applications using the standard application form (SF-424⁵), the program announcement should include the texts of the required assurances and representations and clearly state that the applicant's electronic signature of the SF-424 will serve to affirm its agreement with each representation or assurance.

⁵ For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the "Federal Directory of Contract Administration Services (CAS) Components," which may be accessed through the Defense Contract Management Agency homepage at: <http://www.dcmamail>.

- 30. Section 22.520 is amended by:
 - a. In paragraph (d)(2):
 - i. Removing "Director of Defense Research and Engineering" and adding "Assistant Secretary of Defense for Research and Engineering" in its place.
 - ii. Removing "Director for Basic Sciences, ODUSD(LABS)" and adding "Director for Basic Research, OASD(R&E)" in its place.
 - b. Revising paragraph (e)(1).
 - c. In paragraph (e)(5) introductory text, removing "on the EPLS" and adding "in SAM Exclusions" in its place.
 - d. In paragraph (e)(5)(i):
 - i. Removing "check the EPLS" and adding "check SAM Exclusions" in its place.
 - ii. Removing "an institution's EPLS listing" and adding "an institution's SAM Exclusions listing" in its place.
 - e. In paragraph (e)(5)(iii)(A), removing "removed from the EPLS" and adding

"removed from SAM Exclusions" in its place.

The revision reads as follows:

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

* * * * *

(e) * * * (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 in the Exclusions area of the System for Award Management (SAM Exclusions). The exclusion types in SAM Exclusions broadly indicate the nature of an institution's ineligibility, as well as the effect of the exclusion, and the Additional Comments field may have further details about 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 SAM Exclusions prior to determining that a recipient is qualified to receive an award.

- * * * * *
- 31. Section 22.605 is amended by:
 - a. Revising the introductory text and paragraphs (a) and (b).
 - b. In paragraph (c)(2), redesignating footnote number 9 as footnote number 6 and revising newly redesignated footnote 6.

The revisions read as follows:

§ 22.605 Grants officers' responsibilities.

At the time of award, the grants officer is responsible for ensuring that:

- (a) The award:
 - (1) Conforms to the award format specified in 2 CFR part 1120.
 - (2) Includes appropriate general terms and conditions and any program-specific and award-specific terms and conditions needed to specify applicable administrative, national policy, and programmatic requirements. These requirements include:
 - (i) Federal statutes or Executive orders that apply broadly to Federal or DoD grants and cooperative agreements; and
 - (ii) Any requirements specific to the program, as prescribed in the program statute (see § 22.210(a)(2)), or specific to the funding, as stated in pertinent Congressional appropriations (see § 22.515).
 - (b) Information about the award is reported to the Defense Assistance Award Data System (DAADS), in accordance with Subpart E of 32 CFR part 21.
- (c) * * *
- (2) * * *

⁶ See footnote 5 to § 22.510(b).

§ 22.610 [Removed]

- 32. Section 22.610 is removed.

§ 22.700 [Amended]

- 33. Section 22.700 is amended by removing "32 CFR parts 32, 33, and 34" and adding "32 CFR part 34 and subchapter D of 2 CFR chapter XI" in its place.
- 34. Section 22.710 is amended by:
 - a. In the introductory text, redesignating footnote number 10 as footnote number 7 and revising newly redesignated footnote 7;
 - b. In paragraph (a)(1):
 - i. Removing "the university cost principles in OMB Circular A-21" and adding "the cost principles in subpart E of 2 CFR part 200" in its place;
 - ii. Removing footnote 11;
 - c. In paragraph (a)(2):
 - i. Removing "OMB Circular A-122" and adding "subpart E of 2 CFR part 200" in its place;
 - ii. Removing footnote 12;
 - d. In paragraph (b) introductory text, removing "Defense Contract Management Command" and adding "Defense Contract Management Agency" in its place;
 - e. In paragraph (b)(2), removing "Attachment C of OMB Circular A-122" and adding "appendix VIII to 2 CFR part 200" in its place; and
 - f. In paragraph (b)(3), removing "OMB Circular A-122" and adding "subpart E of 2 CFR part 200" in its place.

The revision reads as follows:

§ 22.710 Assignment of grants administration offices.

* * * * *

⁷ The "Federal Directory of Contract Administration Services (CAS) Components" may be accessed through the Defense Contract Management Agency homepage at <http://www.dcmamail>.

* * * * *

- 35. Section 22.715 is amended by:
 - a. In paragraph (a)(1) and paragraph (a)(3) introductory text, removing "OMB Circular A-133" and adding "subpart F of 2 CFR part 200" in its place.
 - b. In paragraph (a)(3)(iii):
 - i. Removing "OMB Circular A-133, as implemented at 32 CFR 32.26 and 33.26" and adding "subpart F of 2 CFR part 200, as implemented at subpart E of 2 CFR part 1128" in its place.
 - ii. Removing "400 Army-Navy Drive, Arlington, VA 22202" and adding "4800 Mark Center Drive, Alexandria, VA 22350-1500" in its place.
 - c. In paragraph (a)(4):
 - i. Removing "DoD Directive 7640.2" and adding "DoD Instruction 7640.02" in its place.

- ii. Removing “DoD Directive 7600.10” and adding “DoD Instruction 7600.10” in its place.
- iii. Redesignating footnote numbers 13 and 14 as footnote numbers 8 and 9, respectively, and revising newly redesignated footnote 9.

§ 22.715 Grants administration office functions.

* * * * *

- (a) * * *
- (4) * * *

⁹ See footnote 8 to this section.

* * * * *

- 36. Section 22.805 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 22.805 Post-award requirements in other parts.

Grants officers responsible for post-award administration of grants and cooperative agreements shall administer such awards in accordance with the following parts of the DoDGARs, as supplemented by this subpart:

(a) *Awards to domestic recipients.* Standard administrative requirements for grants and cooperative agreements with domestic recipients are specified in other parts of the DoDGARs, as follows:

(1) For awards to domestic institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, requirements are specified in subchapter D of 2 CFR chapter XI.

(2) For awards to domestic for-profit organizations, requirements are specified in 32 CFR part 34.

* * * * *

- 37. Section 22.810 is amended by:

- a. Revising paragraphs (b)(1) and (2).
- b. Removing and reserving paragraph (c)(1).

- c. In paragraph (c)(3)(i), redesignating footnote number 15 as footnote number 10 and revising newly redesignated footnote 10.

- d. In paragraph (c)(3)(iii), removing “ensure that the recipients’ Taxpayer Identification Number (TIN)” and adding “ensure that, for recipients not required to register in the System for Award Management, the recipients’ Taxpayer Identification Number (TIN)” in its place.

The revisions read as follows:

§ 22.810 Payments.

* * * * *

(b) * * * (1) It is Governmentwide policy to minimize the time elapsing between any payment of funds to a recipient and the recipient’s disbursement of the funds for program purposes.

(2) It also is a Governmentwide requirement to use electronic funds transfer (EFT) in the payment of any grant unless the recipient has obtained a waiver in accordance with Department of the Treasury regulations at 31 CFR part 208. As a matter of DoD policy, this requirement applies to cooperative agreements, as well as grants. Within the Department of Defense, the Defense Finance and Accounting Service implements this EFT requirement, and grants officers have collateral responsibilities at the time of award, as described in § 22.605(c), and in post-award administration, as described in paragraph (c)(3)(iv) of this section.

* * * * *

(c) * * *

(3) * * *

(i) * * *

¹⁰ See footnote 8 to § 22.715(a)(4).

* * * * *

- 38. Section 22.825 is amended by:

- a. Revising paragraph (a).

- b. In paragraph (b)(2)(ii), removing “OMB Circular A–133, where that Circular is applicable” and adding “OMB guidance in subpart F of 2 CFR part 200, where that guidance is applicable” in its place.

The revision reads as follows:

§ 22.825 Closeout audits.

(a) *Purpose.* This section establishes DoD policy for obtaining audits at closeout of individual grants and cooperative agreements.

* * * * *

Appendix B to Part 22—[Removed]

- 39. Appendix B to part 22 is removed.

Appendix C to Part 22—[Removed]

- 40. Appendix C to part 22 is removed.

PART 32—[REMOVED]

- 41. Under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, part 32 is removed.

PART 33—[REMOVED]

- 42. Under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, part 33 is removed.

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

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

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

§ 34.1 [Amended]

- 44. Section 34.1 is amended in paragraph (b)(2)(ii) by removing “(e.g., 32 CFR part 33 specifies requirements for subrecipients that are States or local governments, and 32 CFR part 32 contains requirements for universities or other nonprofit organizations)”.

- 45. Section 34.2 is amended by revising the definition of “Small award” to read as follows:

§ 34.2 Definitions.

* * * * *

Small award. See the definition for this term in 2 CFR part 1108.

* * * * *

§ 34.3 [Amended]

- 46. Section 34.3 is amended in paragraph (c) by removing “Director, Defense Research and Engineering” and adding “Assistant Secretary of Defense for Research and Engineering” in its place.

- 47. Section 34.12 is amended in paragraph (d) by revising footnote 1 to read as follows:

§ 34.12 Payment.

* * * * *

(d) * * *

¹ For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the “Federal Directory of Contract Administration Services (CAS) Components,” which is available through the “CAS Directory” link at the Defense Contract Management Agency homepage (<http://www.dcmamail>).

* * * * *

§ 34.15 [Amended]

- 48. Section 34.15 is amended in paragraph (c)(3)(i) by removing “\$100,000” and adding “the simplified acquisition threshold” in its place.

§ 34.16 [Amended]

- 49. Section 34.16 is amended by:

- a. In paragraph (a), removing “\$500,000” and adding “\$750,000” in its place; and

- b. In paragraph (d)(2)(ii):

- i. In the second sentence, removing “Defense Contract Management Command (DCMC)” and adding “Defense Contract Management Agency (DCMA)” in its place; and
- ii. In the third sentence, removing “DCMC” and adding “DCMA” in its place.

- 50. Section 34.17 is amended by revising paragraph (b) to read as follows:

§ 34.17 Allowable costs.

* * * * *

(b) *Other types of organizations.* Allowability of costs incurred by other types of organizations that may be subrecipients under a prime award to a for-profit organization is determined as follows:

(1) *Institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.* Allowability is determined in accordance with the cost principles in subpart E of OMB guidance in 2 CFR part 200. Note that 2 CFR 200.401(c) provides that a nonprofit organization listed in appendix VIII to 2 CFR part 200 is subject to the FAR and DFARS cost principles specified in paragraph (a)(1) of this section for for-profit organizations.

(2) *Hospitals.* Allowability is determined in accordance with the cost principles identified in appendix IX to 2 CFR part 200 (currently 45 CFR part 75).

§ 34.41 [Amended]

■ 51. In § 34.41 amend the introductory text by removing “32 CFR 32.51 and 32.52” and adding “subparts A and B of 2 CFR part 1134” in its place.

■ 52. Appendix A to part 34 is amended by:

■ a. In paragraph 2, removing “40 U.S.C. 276c” and adding “40 U.S.C. 3145” in its place.

■ b. In paragraph 3, removing “40 U.S.C. 327–333” in both places it appears and adding “40 U.S.C., chapter 37” in their places.

■ c. In paragraph 5, removing “\$100,000” and adding “\$150,000” in its place.

■ d. Revising paragraph 7.

■ e. Adding paragraphs 8 through 10.

The revision and additions 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 identified in the Exclusions area of the System for Award Management (SAM Exclusions) as being currently debarred, suspended, or otherwise excluded. This restriction is 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.”

8. *Wage Rate Requirements (Construction), formerly the Davis Bacon Act.* When required by Federal program legislation, you must take the following actions with respect to each construction contract for more than \$2,000 to be awarded using funding provided under this award:

a. Place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor;

b. Condition the decision to award the contract upon the contractor’s acceptance of that prevailing wage determination;

c. Include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”) to require the contractor’s compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C. 3141–44, 3146, and 3147); and

d. Report all suspected or reported violations to the award administration office identified in this award.

9. *Fly America requirements.* In each contract under which funds provided under this award might be used to participate in costs of international air travel or transportation for people or property, you must include a clause to require the contractor to:

a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the “Fly America” Act), as implemented by the General Services Administration at 41 CFR 301–10.131 through 301–10.143, which provides that U.S. Government financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost sharing arrangement with a U.S. carrier, if such service is available; and

b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

10. *Cargo preference for United States flag vessels.* In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with Federal funds under this award, and transported by ocean vessel, be transported on privately owned U.S. flag commercial vessels, if available.

PART 37—TECHNOLOGY INVESTMENT AGREEMENTS

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

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

■ 54. Section 37.130 is amended by revising paragraph (c) to read as follows:

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

* * * * *

(c) Portions of other DoDGARs parts apply to TIAs only as cited by reference in this part.

§ 37.225 [Amended]

■ 55. In § 37.225 amend the introductory text by removing “In accordance with § 37.1030, you will report your answers to these questions to help the DoD measure the Department-wide benefits of using TIAs and meet requirements to report to the Congress.” and adding “In accordance with § 37.1020, you must document your answers to these questions in the award file.” in its place.

■ 56. Section 37.620 is revised to read as follows:

§ 37.620 What financial management standards do I include for participants that are nonprofit?

So as not to force system changes for any State, local government, institution of higher education, or other nonprofit organization, your expenditure-based TIA’s requirements for the financial management system of any nonprofit participant are the same as those that apply to the participant’s other Federal assistance awards.

■ 57. Section 37.635 is revised to read as follows:

§ 37.635 What cost principles do I require a nonprofit participant to use?

So as not to force financial system changes for any nonprofit participant, your expenditure-based TIA will provide that costs to be charged to the research project by any nonprofit participant must be determined to be allowable in accordance with:

(a) Subpart E of OMB guidance in 2 CFR part 200, if the participant is a State, local government, Indian tribe, institution of higher education, or nonprofit organization. In conformance with 2 CFR 200.401(c) of that OMB guidance, a nonprofit organization listed in appendix VIII to 2 CFR part 200 is subject to the cost principles in the Federal Acquisition Regulation (48 CFR subpart 31.2) and Defense Federal Acquisition Regulation Supplement (48 CFR subpart 231.2).

(b) The cost principles identified in appendix IX to the OMB guidance in 2 CFR part 200 (see 45 CFR part 75), if the participant is a hospital.

§ 37.645 [Amended]

■ 58. Section 37.645 is amended in paragraph (b)(1) by removing “\$500,000” and adding “\$750,000” in its place.

§ 37.650 [Amended]

■ 59. Section 37.650 is amended in paragraph (c) by removing “400 Army-Navy Drive, Arlington, VA 22202” and adding “4800 Mark Center Drive, Alexandria, VA 22350–1500” in its place.

§ 37.660 [Amended]

■ 60. Section 37.660 is amended by redesignating footnote number 4 as footnote number 2.

■ 61. Section 37.665 is revised to read as follows:

§ 37.665 Must I require nonprofit participants to have periodic audits?

Yes, expenditure-based TIAs are assistance instruments subject to the Single Audit Act (31 U.S.C. 7501–7507), so nonprofit participants are subject to their usual requirements under that Act, as implemented by subpart F of 2 CFR part 200. Specifically, the requirements are the same as those in subpart E of 2 CFR part 1128 for grants and cooperative agreements to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Note that those requirements also apply to Federally Funded Research and Development Centers (FFRDCs) and other Government-owned, Contractor-Operated (GOCO) facilities administered by nonprofit organizations, because nonprofit FFRDCs and GOCOs are subject to the Single Audit Act.

§ 37.675 [Removed]

■ 62. Section 37.675 is removed.

§ 37.680 [Removed]

■ 63. Section 37.680 is removed.

■ 64. Section 37.690 is revised to read as follows:

§ 37.690 How are nonprofit participants to manage real property and equipment?

For nonprofit participants, your TIA’s requirements for vesting of title, use, management, and disposition of real property or equipment acquired under the award are the same as those that apply to the participant’s other Federal assistance awards.

■ 65. Section 37.695 is amended by:

■ a. Revising paragraph (b); and

■ b. Removing paragraph (c).

The revision reads as follows:

§ 37.695 What are the requirements for Federally owned property?

* * * * *

(b) The requirements that apply to the participant’s other Federal awards, if it is an entity other than a for-profit firm. If the other Federal awards of a participant that is a GOCO or FFRDC administered by a nonprofit organization are procurement contracts, it is appropriate for you to specify the same property standards that apply to those Federal procurement contracts.

■ 66. Section 37.710 is amended by revising paragraph (a) to read as follows:

§ 37.710 What standards do I include for purchasing systems of nonprofit organizations?

(a) So as not to force system changes for any nonprofit participant, your expenditure-based TIA will provide that each nonprofit participant’s purchasing system comply with standards that conform as much as practicable with requirements that apply to the participant’s other Federal awards.

* * * * *

§ 37.875 [Amended]

■ 67. Section 37.875 is amended by redesignating footnote number 6 as footnote number 3.

■ 68. Section 37.880 is revised to read as follows:

§ 37.880 What requirements must I include for periodic reports on program and business status?

Your TIA must include requirements that, as a minimum, include periodic reports addressing program and, if it is an expenditure-based award, business status. You must require submission of the reports at least annually, and you may require submission as frequently as quarterly (this does not preclude a recipient from electing to submit more frequently than quarterly the financial information that is required to process payment requests if the award is an expenditure-based TIA that uses reimbursement or advance payments under § 37.810(a)). The requirements for the content of the reports are as follows:

(a) The program portions of the reports must address progress toward achieving program performance goals, including current issues, problems, or developments.

(b) The business portions of the reports, applicable only to expenditure-based awards, must provide summarized details on the status of resources (federal funds and non-federal cost sharing), including an accounting

of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations. You may require a recipient to separately identify in these reports the expenditures for each participant in a consortium and for each programmatic milestone or task, if you, after consulting with the program official, judge that those additional details are needed for good stewardship.

■ 69. Section 37.890 is amended by redesignating footnote number 7 as footnote number 4 and revising newly redesignated footnote 4 to read as follows:

§ 37.890 Must I require a final performance report?

* * * * *

⁴ See footnote 3 to § 37.875(b)(1).

§ 37.895 [Amended]

■ 70. Section 37.895 is amended by redesignating footnote number 8 as footnote number 5.

■ 71. Section 37.920 is revised to read as follows:

§ 37.920 What requirement for access to a nonprofit participant’s records do I include in a TIA?

Your TIA must include for any nonprofit participant, including any FFRDC or GOCO administered by a nonprofit organization, the standard access-to-records requirement that subpart B of 2 CFR part 1136 specifies in Section F of OAR Article II (the standard wording for Section F of OAR Article II is provided in appendix B to 2 CFR part 1136).

§ 37.1000 [Amended]

■ 72. In § 37.1000 amend paragraph (c) by removing “§§ 37.1025 through 37.1035” and adding “§ 37.1025” in its place.

§ 37.1010 [Amended]

■ 73. In § 37.1010 amend paragraph (l) by removing “and § 37.680.”

§ 37.1030 [Removed]

■ 74. Section 37.1030 is removed.

§ 37.1035 [Removed]

■ 75. Section 37.1035 is removed.

§ 37.1040 [Removed]

■ 76. Section 37.1040 is removed.

§ 37.1100 [Amended]

■ 77. Section 37.1100 is amended by removing paragraph (g).

■ 78. Appendix D to part 37 is amended by revising Sections B and C to read as follows:

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

* * * * *

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. Part 1122 of 2 CFR lists national policy requirements that commonly apply to DoD grants and cooperative agreements. It also has standard wording of general terms and conditions to incorporate the requirements in award documents. Of those requirements, the following six apply to all TIAs. (Note that TIAs must generally use the standard wording in 2 CFR part 1122 for the terms and conditions of these six requirements, but not the standard format.)

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.

2. Requirements concerning drug-free workplace in the Governmentwide common rule that the DoD has codified at 32 CFR part 26. The requirements apply to all financial assistance.

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.*), as implemented by DoD regulations at 32 CFR part 195. 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).

4. Prohibitions on discrimination on the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*). They apply to all financial assistance and require flow down to subrecipients, as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

5. Prohibitions on discrimination on the basis of handicap, in 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. They apply to all financial assistance recipients and require flow down to subrecipients.

6. Preferences for use of U.S.-flag air carriers in the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301–10.131 through 301–10.143, which apply to uses of U.S. Government funds.

C. Other National Policy Requirements

Additional national policy requirements may apply in certain circumstances, as follows:

1. If construction work is to be done under a TIA or its subawards, it is subject to the prohibitions in Executive Order 11246, as amended, on discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. You must include the clause provided in 41 CFR 60–1.4(b) in any “federally assisted construction contract” (as defined in 41 CFR 60–1.3) under this award unless provisions of 41 CFR part 60–1 exempt the contract from the requirement. The clause will require the contractor to comply with equal opportunity requirements in 41 CFR chapter 60.

2. If the research involves human subjects or animals, it is subject to the applicable requirements identified in appendix C of 2 CFR part 1122.

3. If the research involves actions that may affect the human environment, it is subject to the requirements of the National Environmental Policy Act in paragraph A.4.a of NP Article II, which is found in appendix B of 2 CFR part 1122. It also may be subject to one or more of the other requirements in paragraphs A.4.b through A.4.f, A.5, and A.6 of NP Article II, which concern flood-prone areas, coastal zones, coastal barriers, wild and scenic rivers, underground sources of drinking water, endangered species, and marine mammal protection.

4. If the project may impact any property listed or eligible for listing on the National Register of Historic Places, it is subject to the National Historic Preservation Act of 1966 (54 U.S.C. 306108) as specified in paragraph 11.a of NP Article IV, which is found in appendix D of 2 CFR part 1122.

5. If the project has potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, it is subject to the Archaeological and Historic Preservation Act of 1974 (54 U.S.C. Chapter 3125) as specified in paragraph 11.b of NP Article IV, which is found in appendix D of 2 CFR part 1122.

■ 79. Appendix E to part 37 is revised 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?

A. As discussed in § 37.705, you must inform recipients of any national policy requirements that flow down to their purchases of goods or services (e.g., supplies or equipment) under their TIAs. Note that purchases of goods or services differ from subawards, which are for substantive research program performance.

B. Appendix A to 32 CFR part 34 lists ten national policy requirements that commonly apply to firms’ purchases under grants or cooperative agreements. Of those ten, two that apply to all recipients’ purchases under TIAs are:

1. *Byrd Anti-Lobbying Amendment* (31 U.S.C. 1352). A contractor submitting a bid to the recipient for a contract award of \$100,000 or more must file a certification

with the recipient that it has not and will not use Federal appropriations for certain lobbying purposes. The contractor also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. For further details, see 32 CFR part 28, the DoD’s codification of the Governmentwide common rule implementing this amendment.

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 at 2 CFR 180.220) shall not be made to parties identified in the Exclusions area of the System for Award Management (SAM Exclusions) as being currently debarred, suspended, or otherwise excluded. This restriction is 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.”

C. The following requirements apply to recipient’s purchases under TIAs in the situations specified below:

1. *Equal Employment Opportunity*. Although construction work should happen rarely under a TIA, the agreements officer in that case should inform the recipient that Department of Labor regulations at 41 CFR 60–1.4(b) prescribe a clause that must be incorporated into recipients’ and subrecipients’ construction contracts under their awards and subawards, respectively. Further details are provided in appendix B to part 22 of the DoDGARs (32 CFR part 22), in section b. under the heading “Nondiscrimination.” any “federally assisted construction contract” (as defined in 41 CFR 60–1.3) under the award unless provisions of 41 CFR part 60–1 exempt the contract from the requirement. The clause will require the contractor to comply with equal opportunity requirements in 41 CFR chapter 60.

2. *Wage Rate Requirements (Construction)*, formerly the *Davis Bacon Act*. When required by Federal program legislation, you must take the following actions with respect to each construction contract for more than \$2,000 to be awarded using funding provided under this award:

a. Place in the solicitation under which the contract will be awarded a copy of the current prevailing wage determination issued by the Department of Labor;

b. Condition the decision to award the contract upon the contractor’s acceptance of that prevailing wage determination;

c. Include in the contract the clauses specified at 29 CFR 5.5(a) in Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”) to require the contractor’s compliance with the Wage Rate Requirements (Construction), as amended (40 U.S.C. 3141–44, 3146, and 3147); and

d. Report all suspected or reported violations to the award administration office identified in this award.

3. *Fly America requirements*. In each contract under which funds provided under this award might be used to participate in costs of international air travel or

transportation for people or property, you must include a clause to require the contractor to:

a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the “Fly America” Act), as implemented by the General Services Administration at 41 CFR 301–10.131 through 301–10.143, which provides that U.S Government financed international air travel and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost

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

b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

4. *Cargo preference for United States flag vessels.* In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities

purchased or otherwise obtained with Federal funds under this award, and transported by ocean vessel, be transported on privately owned U.S. flag commercial vessels, if available.

Dated: July 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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