

**§ 1104.120 Definitions.**

(a) *DoD Grant and Agreement Regulations or DoDGARs* means the regulations in chapter I, subchapter C of title 32, Code of Federal Regulations, and chapter XI of title 2, Code of Federal Regulations.

(b) *Other terms.* See part 1108 of the DoDGARs for definitions of other terms used in this part.

**PARTS 1105–1109—[RESERVED]**

■ 3. Subchapter B to chapter XI, consisting of parts 1110 through 1119, is added and reserved to read as follows:

**Subchapter B—[RESERVED]****PARTS 1110–1119—[RESERVED]**

■ 4. Subchapter C to chapter XI, consisting of parts 1120 through 1125, is added to read as follows:

**Subchapter C—Award Format and National Policy Terms and Conditions for All Grants and Cooperative Agreements****PARTS 1120–1124—[RESERVED]****PART 1125—[TRANSFERRED TO SUBCHAPTER C]**

■ 5. Part 1125 is transferred to subchapter C.

■ 6. Subchapter D to chapter XI, consisting of parts 1126 through 1140, is added to read as follows:

**Subchapter D—Administrative Requirements Terms and Conditions for Cost-Type Grants and Cooperative Agreements to Nonprofit and Governmental Entities****PART 1126–1140—[RESERVED]**

■ 7. Subchapter E to chapter XI, consisting of parts 1141 through 1155, is added and reserved to read as follows:

**Subchapter E—[Reserved]****PARTS 1141–1155—[RESERVED]**

■ 8. Subchapter F to chapter XI, consisting of parts 1156 through 1170, is added and reserved to read as follows:

**Subchapter F—[RESERVED]****PART 1156–1170—[RESERVED]**

■ 9. Subchapter G to chapter XI, consisting of parts 1171 through 1199, is added and reserved to read as follows:

**Subchapter G—[RESERVED]****PART 1171–1199—[RESERVED]**

Dated: July 24, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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**DEPARTMENT of DEFENSE****Office of the Secretary****2 CFR Part 1120**

**[DOD–2016–OS–0052]**

**RIN 0790–AJ47**

**Award Format for DoD Grants and Cooperative Agreements**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule is the second of a sequence of six final rules 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). This rule adds a new DoDGARs part to establish a standard format for organizing the content of DoD Components' awards of grants and cooperative agreements and modifications to them.

**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 final rulemaking immediately preceding this one in this issue of the **Federal Register**, this is one of six rules that collectively make needed updates to the Department of Defense Grant and Agreement Regulations (DoDGARs). These rules were published as Notices of Proposed Rulemaking (NPRM) on November 7, 2016 (81 FR 78356).

One purpose of the overall updating is to implement Office of Management and Budget (OMB) guidance to Federal agencies on administrative

requirements, cost principles, and audit requirements applicable to Federal grants, cooperative agreements, and other assistance instruments (2 CFR part 200).

This final rule does that by implementing provisions of the OMB guidance on the minimum content that Federal agencies' awards must include. Another purpose of this rule is to provide greater uniformity in the content and organization of DoD grants and cooperative agreements. It does so by:

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

**B. Revisions Implemented by This Rule**

This final rule implements provisions of the OMB guidance on the minimum content that Federal agencies' awards must include on the notice of award. This rule revises current practices by:

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

**C. Legal Authorities for the Regulatory Action**

There are two statutory authorities for this final rulemaking:

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

**II. Regulatory History**

In December 2014 (79 FR 76047), DoD established an interim implementation of the final guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," published by the Office of Management and Budget (OMB) on December 26, 2013, in 2 CFR part 200 (Uniform Guidance—available at 78 FR 78589). DoD then published a Notice of Proposed Rulemaking (November 7, 2016 (81 FR 78369)) that proposed to add 2 CFR part 1120 to establish a standard format for organizing the content of DoD

Components' grant and cooperative agreement awards and modifications to them.

### III. Comments and Responses

DoD received no public comments on the proposed addition of 2 CFR part 1120, including the several areas cited in the NPRM as variations from the OMB guidance, *i.e.*, providing more detailed explanations of some of the information elements listed in the OMB guidance in 2 CFR 200.210(a); clarifying the guidance in 2 CFR 200.210(a)(15) on the inclusion in each award of the recipient's indirect cost rate for the award; and translation of awards into a language other than English.

DoD made several changes in this final rule for accuracy and consistency with other parts of the DoDGARs being made final today as follows:

- In 2 CFR 1120.105(a)(10)(iii), we added language to clarify that DoD Components are required to make known to recipients (1) where portions of the award (as specified in 2 CFR 1120.105(a)(10)(ii)) are located, and, (2) when incorporating any portion of the award by reference, what is being incorporated and where to find the full text.

- To make the wording of part 1120 consistent with the scope of Subchapter D of the DoDGARs (parts 1126 through 1138), we added the phrase "cost-type" to modify "awards" in 2 CFR 1120.510(a) and 1120.515(a).

In addition, we made several minor editorial changes for clarity and to conform to current terminology, *e.g.*, substituting "funding opportunity announcement" for "program announcement."

### IV. Regulatory Analyses

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

#### A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules,

and of promoting flexibility. This rule has been designated as a "not significant" regulatory action, and not economically significant, under section 3(f) of Executive Order 12866.

Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive Orders.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process." This is not subject to the requirements of this Executive Order because it is not significant under Executive Order 12866.

#### Costs

DoD has found that this rule will not impose costs on the public, as there are not any costs associated with standardizing the DoD award forms.

#### Benefits

The benefits of this regulatory action result from:

- Standardization across DoD of the location of basic information about the award and requirements contained in award terms and conditions across awards made by about 100 DoD Component awarding offices; and

- DoD Components incorporating DoD-wide standard wording for administrative and national policy requirements into their general terms and conditions by reference, making it easier to identify how each awarding office's general terms and conditions vary from the DoD standard wording.

For the first time, there is a uniform implementation for DoD of OMB guidance, national policy requirements, and DoD policy through general terms and conditions. In addition, the standard format should enable recipients to more easily and quickly find requirements in different offices' awards, as each requirement should appear in a standard location across awards.

Standard wording and use of plain language should reduce the time that otherwise would be spent reading and interpreting differently worded terms and conditions for the same requirements. Based on comments DoD has received from recipients since it established the DoDGARs in the 1990s, we expect that the standard award format and use of standard wording and plain language in general terms and

conditions will reduce administrative burdens for recipients while improving transparency and ease of compliance. The primary benefit will be to those recipients that receive awards from multiple DoD Components, but all recipients should benefit from the use of such a format.

#### Alternatives

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

2. Next Best alternative—The next best alternative would be to implement requirements beyond the mandatory minimum content that Federal agencies' awards must include. By creating additional requirements, the public will experience an additional regulatory burden without, necessarily, gaining an additional benefit. Therefore, this alternative was not chosen as the preferred alternative.

#### 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.

#### *G. Federalism*

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

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

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

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

### **PART 1120—AWARD FORMAT FOR DOD GRANTS AND COOPERATIVE AGREEMENTS**

Sec.

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

#### **Subpart A—Award Cover Pages**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Each DoD Component that awards grants or cooperative agreements must:
  - (a) Conform the format of its awards to the standard format established by this part no later than [18 months after the effective date of the final rule].
  - (b) Update electronic systems it maintains for generating awards within 18 months of the issuance of a new or updated DoD form for the award cover pages, in order to implement that form in those systems, unless it has an approved deviation in accordance with § 1120.110.

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

- (a) The standard award format has three major elements that are designated as Divisions I through III of the award.
  - (1) The first major element of the standard award format is comprised of the award cover pages. It is designated as Division I of the award.
  - (2) The second major element is comprised of any award-specific terms and conditions. That element is designated as Division II of the award.
  - (3) The last of the three major elements of the standard award format is comprised of the general terms and conditions. That element is designated as Division III of the award. It has four subelements that are designated as Subdivisions A through D of the general terms and conditions.
    - (i) The first subelement of the general terms and conditions is the preamble, which is designated as Subdivision A.
    - (ii) The second subelement of the general terms and conditions is comprised of terms and conditions addressing administrative requirements.

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

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

designated as Subdivision C of the general terms and conditions.

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

That subelement is designated as

Subdivision D of the general terms and conditions.

(b) This part has seven subparts. Each subpart addresses one major element or subelement of the standard award format, as shown in Table 1:

TABLE 1 TO PARAGRAPH (b)

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

### Subpart A—Award Cover Pages

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

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

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

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

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

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

The award cover pages of each DoD Component grant or cooperative agreement or modification:

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

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

(2) The award number (Federal Award Identification Number or FAIN) and, if the action is a modification, the modification number.

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

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

(5) For a new award or funding modification:

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

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

sharing or matching required under the award.

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

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

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

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

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

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

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

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

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

Domestic Assistance under which the award or modification was made.

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

(i) Whether the project or program under the award is research and development (R&D). This information is needed by auditors performing single audits of recipients because the OMB guidance to the auditors treats all Federal agencies' R&D programs as a single group (or "cluster") of programs for audit sampling purposes (see the Single Audit Act requirements implemented in subpart E of 2 CFR part 1128 and FMS Article V in appendix E to part 1128).

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

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

(B) Approved budget; and

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

(iii) Where the portions of the award listed in paragraph (a)(10)(ii) of this section are located, which content the DoD Component generally should incorporate into the award by reference. When incorporating that content into the award by reference, the DoD Component must both:

(A) Indicate in the award cover pages that the award incorporates those items into the award by reference, thereby making them an integral part of the award; and

(B) Specify their location (see § 1120.315), rather than transmit them in their entirety with each award.

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

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

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

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

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

(2) The recipient's business name and address, which must be the legal business or "doing business as" name and physical address in SAM at the time

of award corresponding to the recipient's unique entity identifier.

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

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

(5) The indirect cost rate in effect at the start of the performance period for the award, which generally is a Governmentwide rate negotiated by the recipient's cognizant agency for indirect costs. However, this requirement does not apply—*i.e.*, the award cover pages need not include the recipient's indirect cost rate—if the recipient entity affirms that it treats its indirect cost rate as proprietary information.

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

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

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

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

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

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

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

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

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

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

A DoD Component must include with each award, for transmission to the recipient, any terms and conditions needed to communicate requirements specific to the individual award as distinct from the more broadly

applicable requirements in the general terms and conditions. For a modification to an award, only changes to previously transmitted terms and conditions must be included.

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

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

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

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

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

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

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

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

(a) DoD Components must use plain language in:

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

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

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

(2) The national policy requirements in Subdivision B of general terms and conditions of grants and cooperative

agreements to for-profit entities, which also are subject to 2 CFR part 1122.

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

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

(a) A DoD Component that issues a funding opportunity announcement under which grants or cooperative agreements may be awarded must maintain on the internet the general terms and conditions for those awards if:

(1) The distribution of the funding opportunity announcement is unlimited; and

(2) The DoD Component anticipates making 10 or more awards per year using those general terms and conditions.

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

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

(1) It must tell potential applicants or proposers in the funding opportunity announcement, if there is one, how they may view or obtain a copy of the general terms and conditions; or

(2) If there is no funding opportunity announcement (e.g., if it is a noncompetitive program for which all recipients are known in advance), the DoD Component must provide the general terms and conditions to each recipient no later than the time of award.

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

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

Each DoD Component must include a preamble as Subdivision A of each set of general terms and conditions it

maintains, to provide information to help recipients understand how to use those terms and conditions.

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

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

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

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

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

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

(1) It must translate any of the award content (including attachments to it and any material incorporated into the award by reference) into another language to the extent that the recipient's compliance with the award's terms and conditions depends upon a significant number of its employees who are not fluent in English being able to read and comprehend that content.

(2) If it does translate any award content into another language, either as required by paragraph (d)(1) of this section or at its own initiative, the original award content in the English language will take precedence in the event of an inconsistency between the award requirements in the English and translated versions.

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

(f) *Definitions.* Providing the definitions of words and phrases that are used in the general terms and conditions and defined in the DoDGARs

is more helpful to recipients than referring them to the DoDGARs to find the definitions.

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

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

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

(a) Financial and program management, to include financial management system standards, payment, allowable costs, program and budget revisions, audits, cost sharing or matching, and program income.

(b) Property administration, to include title vesting, property management system standards, and use and disposition of tangible and intangible property.

(c) Recipient procurement procedures.

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

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

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

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

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

The source of administrative requirements is:

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

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

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

(a) For cost-type awards to institutions of higher education,

nonprofit organizations, States, local governments, and Indian tribes, DoD Components are strongly encouraged to construct the portion of their general terms and conditions addressing administrative requirements by:

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

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

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

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

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

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

(a) That are prescribed by a statute, Executive order, policy guidance issued by the Executive Office of the President, or regulation that specifically refer to grants, cooperative agreements, or financial assistance in general;

(b) With which a recipient of a grant or cooperative agreement must comply during the period of performance; and

(c) That are outside subject matter areas covered by administrative requirements, as described in § 1120.500.

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

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

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

The source of national policy requirements to be included in a grant

or cooperative agreement is 2 CFR part 1122.

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

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

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

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

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

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

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

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

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

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

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

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

As shown in the table in § 1120.4(b), the standard award format includes programmatic requirements as

Subdivision D of the general terms and conditions.

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

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

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

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

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

Dated: July 24, 2020.

Aaron T. Siegel,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **2 CFR Parts 1126, 1128, 1130, 1132, 1134, 1136, and 1138**

[DOD-2016-OS-0054]

RIN 0790-AJ49

#### **Administrative Requirements Terms and Conditions for Cost-Type Grants and Cooperative Agreements to Nonprofit and Governmental Entities**

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule is the third in a sequence of six final rules this issue of the **Federal Register** that update the Department of Defense Grant and Agreement Regulations (DoDGARs). This final rule adds seven new DoDGARs parts to address the administrative requirements included in general terms and conditions of DoD cost-type grants and cooperative agreements awarded to institutions of higher education, nonprofit