

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

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

§ 1120.600 Scope of national policy requirements.

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

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

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

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

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

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

§ 1120.610 Source of national policy requirements.

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

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

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

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

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

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

§ 1120.700 Scope of programmatic requirements.

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

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

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

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

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

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

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

§ 1120.710 Examples of programmatic requirements.

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

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

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

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

projects or programs supported by their awards.

Dated: October 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Office of the Secretary

2 CFR Part 1122

[DOD-2016-OS-0053]

RIN 0790-AJ48

National Policy Requirements: General Award Terms and Conditions

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

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) is the fourth of a sequence of six NPRM documents in this issue of the **Federal Register**. This NPRM proposes to add a new Department of Defense Grant and Agreement Regulations (DoDGARs) part to establish a consistent way for DoD Components to organize the portion of their general terms and conditions covering national policy requirements in areas such as nondiscrimination, environmental protection, and live organisms. The new part also provides standard wording of terms and conditions for national policy requirements that apply generally to DoD programs and awards.

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

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

As explained in the **SUPPLEMENTARY INFORMATION** section of the first of the sequence of NPRMs in this section of this issue of the **Federal Register**, these six NPRMs collectively make a major portion of needed updates to the Department of Defense Grant and Agreement Regulations (DoDGARs). The purpose of this NPRM, the fourth of the sequence, is to maximize uniformity of general terms and conditions addressing national policy requirements within DoD grant and cooperative agreement awards.

Important context for this NPRM is provided by the second NPRM in this section of this issue of the **Federal Register**. That second NPRM proposes a new part 1120 of the DoD Grant and Agreement Regulations to establish a standard award format for DoD Components' grants and cooperative agreements. As described in section 1120.4 of that proposed new part:

- The standard award format has three major elements that are designated as Divisions I through III of the award. The third division, Division III, contains the general terms and conditions of the award.

- The general terms and conditions in Division III have four subelements that are designated as Subdivisions A through D. Subdivision C, the third of the four subelements of Division III, is comprised of general terms and conditions addressing national policy requirements.

This NPRM proposes a new part 1122 of the DoDGARs (2 CFR part 1122) to address the general terms and conditions that the proposed award format places in Subdivision C of Division III of DoD Components' grant and cooperative agreement awards. The specific purposes of the proposed part are to establish: (1) A standard organization for the general terms and conditions addressing national policy requirements; and (2) standard wording of terms and conditions for the national policy requirements that commonly

apply to DoD Components' grants and cooperative agreements.

It should be noted that the proposed part 1122 applies to grant and cooperative agreement awards to all types of recipient entities. That scope distinguishes the proposed part 1122 from the seven new parts of the DoDGARs proposed in the NPRM immediately preceding this one in this issue of the **Federal Register**. Those proposed parts address the organization and content of general terms and conditions for administrative requirements, which the proposed standard award format includes in a different subdivision of the general terms and conditions. However, unlike the proposed part 1122, the seven proposed parts address administrative requirements only for awards to institutions of higher education, nonprofit entities, States, local governments, and Indian tribes, and not for all types of recipients.

2. Legal Authorities for the Regulatory Action

There are two statutory authorities for this NPRM:

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

B. Summary of the Major Provisions of the Regulatory Action

1. Definition of "National Policy Requirement"

The proposed section 2 CFR 1122.2 provides a definition of "national policy requirement" to help DoD Components distinguish the requirements that are to be addressed in Subdivision C of the general terms and conditions from those to be addressed in the subdivisions with administrative or programmatic requirements.

2. Organization of National Policy Requirements Into Articles

The proposed section 2 CFR 1122.105 lists the four articles into which DoD Components are to organize their general terms and conditions addressing national policy requirements. It also explains how part 1122 is organized, with an appendix for each of the four articles to provide standard wording of general terms and conditions addressing commonly applicable national policy requirements.

3. Prescriptive Wording for DoD Components

The proposed sections 2 CFR 1122.115 and 1122.120 provide direction to DoD Components on inclusion of applicable requirements in the four articles of national policy requirements. The proposed prescriptive wording requires DoD Components to use the standard wording of terms and conditions provided in the appendices to 2 CFR part 1122 unless a statute or regulation authorized alternate wording.

4. Flowdown to Subrecipients

The proposed wording of terms and conditions in 2 CFR part 1122 does not establish a requirement for recipients to flow down national policy requirements to lower-tier subrecipients. For DoD Component awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes, that requirement is addressed in a proposed new 2 CFR part 1138. Part 1138 provides a standard organization and wording for general terms and conditions related to recipients' award and administration of subawards under DoD grants and cooperative agreements. The proposed part 1138 addresses flowdown of both administrative and national policy requirements to all types of subrecipient entities. It is one of the seven new parts proposed in the NPRM immediately preceding this one in this issue of the **Federal Register**.

5. Supersession

The proposed 2 CFR part 1122 supersedes the current table entitled "Suggested Award Provisions for National Policy Requirements That Often Apply," which is in Appendix B to part 22 of the DoDGARs (32 CFR part 22). The last in the sequence of six NPRMs in this section of this issue of the **Federal Register** therefore proposes to remove that appendix from 32 CFR part 22 as one of the needed conforming changes to existing DoDGARs parts.

C. Costs and Benefits

The principal benefits of the regulatory action proposed in this NPRM are that recipients, auditors, DoD post-award administrators, and others who use the content of awards from multiple DoD Component awarding offices should:

- Be able to find what they need within different offices' awards more quickly and easily due to the standard organization for general terms and conditions covering national policy requirements.

• Spend less time evaluating terms and conditions, because the standard wording for commonly applicable national policy requirements will obviate the need to interpret different wording various offices' awards include for the same requirement.

If this proposed regulatory action has any impact on a recipient's costs of complying with applicable national policy requirements, we therefore expect that the impact would be to reduce those costs.

IV. Regulatory Analysis

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

Executive Order 12866, as supplemented by Executive Order 13563, directs each Federal agency to: Propose regulations only after determining that benefits justify costs; tailor regulations to minimize burdens on society, consistent with achieving regulatory objectives; maximize net benefits when selecting among regulatory approaches; to the extent feasible, specify performance objectives rather than the behavior or manner of compliance; and seek the views of those likely to be affected before issuing a notice of proposed rulemaking, where feasible and appropriate. The Department of Defense has determined that a regulatory implementation that includes a standard organization for the national policy requirements within general terms and conditions of DoD Components' grant and cooperative agreement awards, as well as standard wording of commonly applicable requirements, will maximize long-term benefits in relation to costs and burdens for recipients of those awards. This rule has been designated a "significant regulatory action" under section 3(f) of Executive Order 12866, although not an economically significant one. Accordingly, the rule has been reviewed by OMB.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that a Federal agency prepare a budgetary impact statement before issuing a rule that includes any Federal mandate that may result in the expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in 1995 dollars, updated annually for inflation. In 2015, that inflation-adjusted amount in current dollars is approximately \$146

million. The Department of Defense has determined that this proposed regulatory action will not result in expenditures by State, local, and tribal governments, or by the private sector, of that amount or more in any one year.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is proposing a rule to provide a regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Department of Defense certifies that this proposed regulatory action will not have a significant economic impact on substantial number of small entities.

Paperwork Reduction Act

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

Executive Order 13132, "Federalism"

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

List of Subjects in 2 CFR Part 1122

Business and industry, Colleges and universities, Cooperative agreements, Grants administration, Hospitals, Human research subjects, Indians, Nonprofit organizations, Research misconduct, Small business, State and local governments.

■ Accordingly, 2 CFR chapter XI is proposed to be amended by adding part 1122 to read as follows:

PART 1122—NATIONAL POLICY REQUIREMENTS: GENERAL AWARD TERMS AND CONDITIONS

Sec.

Subpart A—General

1122.1 Purpose of this part.

1122.2 Definition of "national policy requirement."

1122.3 Definitions of other terms as they are used in this part.

Subpart B—Terms and Conditions

1122.100 Purpose of this subpart.

1122.105 Where to find the terms and conditions.

1122.110 Organization of each article of national policy requirements.

1122.115 Cross-cutting national policy requirements.

1122.120 Other national policy requirements.

Appendix A Terms and condition for NP Article I, "Nondiscrimination National Policy Requirements."

Appendix B Terms and condition for NP Article II, "Environmental National Policy Requirements."

Appendix C Terms and conditions for NP Article III, "National Policy Requirements Concerning Live Organisms."

Appendix D Terms and conditions for NP Article IV, "Other National Policy Requirements."

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

Subpart A—General

§ 1122.1 Purpose of this part.

(a) This part specifies a standard format and standard wording of general terms and conditions for Subdivision B of the general terms and conditions of DoD grants and cooperative agreements, which concerns national policy requirements.

(b) It thereby implements:

(1) OMB guidance in 2 CFR 200.210(b)(ii) and 200.300, as those paragraphs of 2 CFR part 200 relate to national policy requirements for general terms and conditions of DoD awards to institutions of higher education and other nonprofit organizations, States, local governments, and Indian tribes.

(2) National policy requirements, to the extent they apply, for general terms and conditions of DoD awards to for-profit firms, foreign organizations, and foreign public entities.

§ 1122.2 Definition of "national policy requirement."

For the purposes of this chapter, a national policy requirement is a requirement:

(a) That is prescribed by a statute, Executive order, policy guidance issued by the Executive Office of the President, or regulation that specifically refers 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 is outside subject matter areas covered by administrative requirements in Subchapters D or E of this chapter.

§ 1122.3 Definition of other terms as they are used in this part.

Because the meaning of some terms used in this part derive from their definitions in the statutes, Executive orders, or other sources of national policy requirements that this part implements, the meanings of those terms may vary from their meanings in other parts of the DoDGARs. For example, some statutes define "State" in ways that differ from each other and from the definition provided in 2 CFR

part B. In each case, the definition in the source of the pertinent national policy requirement takes precedence over the definition in 2 CFR part B for the purposes of complying with that requirement.

Subpart B—Terms and Conditions

§ 1122.100 Purpose of this subpart.

This subpart provides:
 (a) Direction to DoD Components on how to construct the four articles of national policy requirements for

inclusion in the general terms and conditions of grants and cooperative agreements.

(b) Standard wording for national policy requirements that are more commonly applicable to DoD Components' grants and cooperative agreements.

§ 1122.105 Where to find the terms and conditions.

(a) Appendices A through D of this part provide standard wording of terms

and conditions for the four articles of national policy requirements. The articles address the rights and responsibilities of the Government and the recipient related to those national policy requirements.

(b) The following table shows which national policy terms and conditions may be found in each appendix to this part:

| In . . . | You will find terms and conditions specifying recipients' rights and responsibilities related to . . . | That would appear in an award with-in NP article . . . |
|------------------|--|--|
| Appendix A | Non-discrimination national policy requirements | I. |
| Appendix B | Environmental national policy requirements | II. |
| Appendix C | National policy requirements concerning live organisms | III. |
| Appendix D | Other national policy requirements | IV. |

§ 1122.110 Organization of each article of national policy requirements.

Each of NP Articles I through IV includes two sections.

(a) Section A of each article includes national policy requirements that are cross-cutting in that their applicability extends to many or all DoD awards. Appendices A through D to this part provide standard wording for each of those requirements.

(b) Section B of each article is the location in the award for program-specific national policy requirements. Section B is reserved in the standard wording of the articles provided in appendices A through D to this part.

§ 1122.115 Cross-cutting national policy requirements.

(a) *General requirement to include applicable cross-cutting requirements.* A DoD Component's general terms and conditions must include the standard wording provided in Appendices A through D to this part for each national policy requirement addressed in Section A of NP Articles I, II, III, and IV, respectively, that may apply either to:

- (1) A recipient of an award using those general terms and conditions; or
- (2) A subrecipient of a subaward under an award using those general terms and conditions.

(b) *Authority to reserve or omit inapplicable paragraphs.* A DoD Component may reserve or omit any paragraph Appendices A through D to this part provide for Section A of NP Articles I, II, III, and IV of its general terms and conditions if it determines that the national policy requirement addressed in that paragraph will not apply to any awards using those terms and conditions nor to any subawards under them.

(c) *Authority to use alternate wording.*

(1) A DoD Component may use different wording for a national policy requirement than is provided in Appendices A through D to this part if it is authorized or required to do so by a statute or a regulation published in the Code of Federal Regulations after opportunity for public comment.

(2) A DoD Component in that case:

(i) Must include the wording required by the statute or regulation in Section B of the appropriate article. This will help a recipient recognize the wording as a variation of the usual DoD wording for the requirement.

(ii) May either reserve the paragraph of Section A of the article in which that national policy requirement otherwise would appear, or insert in that paragraph wording to refer the recipient to the paragraph in Section B of the article in which the requirement does appear.

§ 1122.120 Other national policy requirements.

If a DoD Component determines that awards using its general terms and conditions, or subawards under them, are subject to a national policy requirement that is not addressed in the standard wording Appendices A through D to this part provide for cross-cutting requirements, the DoD Component must include the requirement in its general terms and conditions. It should add the requirement in Section B of NP Article I, II, III, or IV, as most appropriate to the subject matter of the requirement.

Appendix A to Part 1122—Terms and Conditions for NP Article I, “Nondiscrimination National Policy Requirements”

DoD Components are to use the following standard wording in NP Article I of their general terms and conditions in accordance with provisions of Subpart B of this part:

NP Article I. Nondiscrimination national policy requirements. (December 2014)

Section A. Cross-cutting nondiscrimination requirements

By signing this agreement or accepting funds under this agreement, you assure that you will comply with applicable provisions of the national policies prohibiting discrimination:

- 1. 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 Department of Defense (DoD) regulations at 32 CFR part 195.
- 2. On the basis of gender, blindness, or visual impairment, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), as implemented by DoD regulations at 32 CFR part 196.
- 3. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.
- 4. On the basis of disability, in 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.
- 5. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) related to physically handicapped persons' ready access to, and use of, buildings and facilities for which Federal funds are used in design, construction, or alteration.

Section B. Other nondiscrimination requirements

[Reserved]

Appendix B to Part 1122—Terms and Conditions for NP Article II, “Environmental National Policy Requirements”

DoD Components are to use the following standard wording in NP Article II of their general terms and conditions in accordance with provisions of Subpart B of this part:

NP Article II. Environmental national policy requirements. (December 2014)

Section A. Cross-cutting environmental requirements

You must:

1. You must comply with all applicable Federal environmental laws and regulations. The laws and regulations identified in this section are not intended to be a complete list.

2. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, *et seq.*) and Clean Water Act (33 U.S.C. 1251, *et seq.*).

3. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in buildings owned by the Federal Government or housing receiving Federal assistance.

4. Immediately identify to us, as the Federal awarding agency, any potential impact that you find this award may have on:

a. The quality of the “human environment”, as defined in 40 CFR 1508.14, including wetlands; and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 *et seq.*), the regulations at 40 CFR 1500–1508, and E.O. 12114, if applicable; and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an environmental impact (*e.g.*, physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives to the proposed action until we provide written notification of Federal compliance with NEPA or E.O. 12114.

b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

c. A land or water use or natural resource of a coastal zone that is part of a federally approved State coastal zone management plan and provide any help we may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, *et seq.*) including preparation of a Federal agency Coastal Consistency Determination.

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes’ shores, and provide help we may need to comply with the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to

comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

5. You must comply fully with the Endangered Species Act of 1973, as amended (ESA, at 16 U.S.C. 1531 *et seq.*), and implementing regulations of the Departments of the Interior (50 CFR parts 10–24) and Commerce (50 CFR parts 217–227). You also must provide any help we may need in complying with the consultation requirements of ESA section 7 (16 U.S.C. 1536) applicable to Federal agencies or any regulatory authorization we may need based on the award of this grant. This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

6. You must fully comply with the Marine Mammal Protection Act of 1972, as amended (MMPA, at 16 U.S.C. 1361 *et seq.*) and provide any assistance we may need in obtaining any required MMPA permit based on an award of this grant.

Section B. Other environmental requirements

[Reserved]

Appendix C to Part 1122—Terms and Conditions for NP Article III, “National Policy Requirements Concerning Live Organisms”

DoD Components are to use the following standard wording in NP Article III of their general terms and conditions in accordance with provisions of Subpart B of this part:

NP Article III. National Policy Requirements Concerning Live Organisms. (December 2014)

Section A. Cross-Cutting Requirements Concerning Live Organisms

1. Human Subjects

a. You must protect the rights and welfare of individuals who participate as human subjects in research under this award and comply with the requirements at 32 CFR part 219, DoD Instruction (DoDI) 3216.02, 10 U.S.C. 980, and when applicable, Food and Drug Administration (FDA) regulations.

b. You must not begin performance of research involving human subjects, also known as human subjects research (HSR), that is covered under 32 CFR part 219, or that meets exemption criteria under 32 CFR 219.101(b), until you receive a formal notification of approval from a DoD Human Research Protection Official (HRPO). Approval to perform HSR under this award is received after the HRPO has performed a review of your documentation of planned HSR activities and has officially furnished a concurrence with your determination as presented in the documentation.

c. In order for the HRPO to accomplish this concurrence review, you must provide sufficient documentation to enable his or her assessment as follows:

i. If the HSR meets an exemption criteria under 32 CFR 219.101(b), the documentation

must include a citation of the exemption category under 32 CFR 219.101(b) and a rationale statement.

ii. If your activity is determined as “non-exempt research involving human subjects”, the documentation must include:

A. Assurance of Compliance (*i.e.*, Department of Health and Human Services Office for Human Research Protections (OHRP) Federalwide Assurance (FWA)) appropriate for the scope of work or program plan; and

B. Institutional Review Board (IRB) approval, as well as all documentation reviewed by the IRB to make their determination.

d. The HRPO retains final judgment on what activities constitute HSR, whether an exempt category applies, whether the risk determination is appropriate, and whether the planned HSR activities comply with the requirements in paragraph 1.a of this section.

e. You must notify the HRPO immediately of any suspensions or terminations of the Assurance of Compliance.

f. DoD staff, consultants, and advisory groups may independently review and inspect your research and research procedures involving human subjects and, based on such findings, DoD may prohibit research that presents unacceptable hazards or otherwise fails to comply with DoD requirements.

g. Definitions for terms used in paragraph 1 of this article are found in DoDI 3216.02.

2. Animals

a. Prior to initiating any animal work under the award, you must:

i. Register your research, development, test, and evaluation or training facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2136 and 9 CFR section 2.30, unless otherwise exempt from this requirement by meeting the conditions in 7 U.S.C. 2136 and 9 CFR parts 1–4 for the duration of the activity.

ii. Have your proposed animal use approved in accordance with Department of Defense Instruction (DoDI) 3216.01, Use of Animals in DoD Programs by a DoD Component Headquarters Oversight Office.

iii. Furnish evidence of such registration and approval to the grants officer.

b. You must make the animals on which the research is being conducted, and all premises, facilities, vehicles, equipment, and records that support animal care and use available during business hours and at other times mutually agreeable to you, the United States Department of Agriculture Office of Animal and Plant Health Inspection Service (USDA/APHIS) representative, personnel representing the DoD component oversight offices, as well as the grants officer, to ascertain that you are compliant with 7 U.S.C. 2131 *et seq.*, 9 CFR parts 1–4, and DoDI 3216.01.

c. Your care and use of animals must conform with the pertinent laws of the United States, regulations of the Department of Agriculture, and regulations, policies, and procedures of the Department of Defense (see 7 U.S.C. 2131 *et seq.*, 9 CFR parts 1–4, and DoDI 3216.01).

d. You must acquire animals in accordance with DoDI 3216.01.

3. Use of Remedies

Failure to comply with the applicable requirements in paragraphs 1–2 of this section may result in the DoD Component's use of remedies, e.g., wholly or partially terminating or suspending the award, temporarily withholding payment under the award pending correction of the deficiency, or disallowing all or part of the cost of the activity or action (including the federal share and any required cost sharing or matching) that is not in compliance. See OAR Article III.

Section B. Other Requirements Concerning Live Organisms

[Reserved]

Appendix D to Part 1122—Terms and Conditions for NP Article IV, “Other National Policy Requirements”

DoD Components are to use the following standard wording in NP Article IV of their general terms and conditions in accordance with provisions of Subpart B of this part:

NP Article IV. Other National Policy Requirements. (December 2014)

Section A. Cross-Cutting Requirements

1. *Debarment and suspension.* You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR part 180, as adopted by DoD at 2 CFR part 1125. This includes requirements concerning your principals under this award, as well as requirements concerning your procurement transactions and subawards that are implemented in PROC Articles I through III and SUB Article II.

2. *Drug-free workplace.* You must comply with drug-free workplace requirements in Subpart B of 2 CFR part 26, which is the DoD implementation of 41 U.S.C. chapter 81, “Drug-Free Workplace.”

3. Lobbying.

a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DoD at 32 CFR part 28, and submit all disclosures required by that statute and regulation.

b. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

c. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions.

4. *Officials not to benefit.* You must comply with the requirement that no member of Congress shall be admitted to any share or

part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 6306.

5. *Hatch Act.* If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508) concerning political activities of certain State and local government employees, as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. *Native American graves protection and repatriation.* If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7. *Fly America Act.* You must comply with 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. The law and regulations require 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.

8. *Use of United States-flag vessels.* You must comply with the following requirements of the Department of Transportation at 46 CFR 381.7, in regulations implementing the Cargo Preference Act of 1954:

a. Pursuant to Public Law 83–664 (46 U.S.C. 55305), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 8.a of this section must be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. *Research misconduct.* You must comply with requirements concerning research misconduct in Enclosure 4 to DoD Instruction 3210.7, “Research Integrity and Misconduct.” The Instruction implements the Governmentwide research misconduct policy that the Office of Science and Technology Policy published in the **Federal Register** (65 FR 76260, December 6, 2000, available through the U.S. Government

Printing Office Web site: <http://www.gpo.gov/fdscys/browse/collection.action?Code=FR>.

10. Requirements for an Institution of Higher Education Concerning Military Recruiters and Reserve Officers Training Corps (ROTC).

a. As a condition for receiving funds available to the DoD under this award, you agree that you are not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

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

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

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

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

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of DoD funds under this award and all other DoD grants and cooperative agreements; and

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. *Historic preservation.* You must identify to us any:

a. Property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, “Identification and Protection of Historic Properties,” [3 CFR, 1971–1975 Comp., p. 559]. Impacts to historical properties are included in the definition of “human environment” that require impact assessment under NEPA (See NP Article II, Section A).

b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic

Preservation Act of 1974 (54 U.S.C. chapter 3125).

12. *Relocation and real property acquisition.* You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. *Confidentiality of patient records.* You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14. *Pro-Children Act.*

You must comply with applicable restrictions in the Pro-Children Act of 1994 (Title 20, Chapter 68, Subchapter X, Part B of the U.S. Code) on smoking in any indoor facility:

a. Constructed, operated, or maintained under this award and used for routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18.

b. Owned, leased, or contracted for and used under this award for the routine provision of federally funded health care, day care, or early childhood development (Head Start) services to children under the age of 18.

15. *Constitution Day.* You must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

16. *Trafficking in persons.* You must comply with requirements concerning trafficking in persons specified in the award term at 2 CFR 175.15(b), as applicable.

17. *Whistleblower protections.* You must comply with 10 U.S.C. 2409, including the:

a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies; and

b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.

Section B. Additional Requirements

[Reserved]

Dated: October 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016-25700 Filed 11-4-16; 8:45 am]

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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 Awards to Nonprofit and Governmental Entities

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) is the third of a sequence of six NPRM documents in this section of this issue of the **Federal Register** that propose updates to the Department of Defense Grant and Agreement Regulations (DoDGARs). This NPRM proposes to add 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 organizations, States, local governments, and Indian tribes. The administrative requirements are in areas such as financial and program management; property administration; recipient procurement procedures; financial, programmatic, and property reporting; and subawards. The proposed new parts establish a uniform way for approximately 100 DoD Component awarding offices to organize the administrative requirements in their general terms and conditions. The proposed new parts also provide standard wording of terms and conditions for the administrative requirements, with associated regulatory prescriptions for DoD Components to provide latitude to vary from the standard wording where variation is appropriate.

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

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

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

Mail: Department of Defense, Deputy Chief Management Officer, Directorate

for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Box 24, Alexandria, VA 22350-1700.

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

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

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

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

The Department of Defense Grant and Agreement Regulations (DoDGARs) implement statutes and Governmentwide guidance for grants and cooperative agreements, as needed in order to ensure that DoD Component offices make and administer assistance awards consistently with agency policy. They are in need of updating, in part due to the issuance of new Office of Management and Budget guidance to Federal agencies on administrative requirements, cost principles, and audit requirements that apply to Federal grants, cooperative agreements, and other assistance instruments (2 CFR part 200). This NPRM provides a major portion of the implementation of that guidance, by addressing the administrative requirements to be included in general terms and conditions of DoD Components' awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

2. Legal Authorities for the Regulatory Action

There are two statutory authorities for this NPRM:

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

B. Summary of the Major Provisions of the Regulatory Action

This NPRM establishes seven new DoDGARs parts that collectively govern a DoD Component's construction of the administrative requirements portion of