

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]

**BILLING CODE 5001-06-P**

**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

its general terms and conditions for awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. The seven proposed new parts comprise a subchapter of the DoDGARs—Subchapter D in Chapter XI of 2 CFR.

The first of the proposed parts in the subchapter, 2 CFR part 1126, provides an overview of the subchapter's content. In addition to addressing the purpose and applicability, the overview part describes what the subchapter's remaining six parts address and how they are organized. Section II.B of this **SUPPLEMENTARY INFORMATION** section describes the overview part 1126 in more detail.

Each of the subchapter's other six parts provides both: (1) Standard wording for articles of general terms and conditions specifying requirements for recipients and subrecipients within a given subject matter area; and (2) the associated direction to DoD Components on the use of the standard wording for those articles. Those six parts are described more fully in sections II.C through II.H of this **SUPPLEMENTARY INFORMATION** section.

### C. Costs and Benefits

The major benefit of this NPRM is greatly increased uniformity across the Department in administrative requirements included in DoD grant and cooperative agreement awards each year to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Uniformity helps to lessen administrative burdens and costs for recipients, thereby increasing the productivity of programs supported by DoD assistance awards. This regulatory action takes a major step in that direction by proposing to establish a standard organization and more uniform wording for administrative requirements included in general terms and conditions of more than 15,000 award actions totaling \$4 to \$6 billion each year that are issued:

- By approximately 100 offices in the Departments of the Army, Navy, and Air Force and 11 other DoD Components that are located across the United States and elsewhere.
- Under a variety of programs and to diverse types of recipients. Institutions of higher education receive more than half of the awards, including many awards that support defense research. There also are thousands of awards to other types of recipients and for other defense purposes, such as support to States for the National Guard and economic assistance to communities

impacted by defense downsizing or costs associated with education of military dependents.

The administrative burdens and associated costs to recipients due to the regulatory action proposed in this NPRM are primarily those resulting from the Governmentwide guidance to agencies that OMB issued in 2 CFR part 200. Some variations from the guidance noted in sections II.C through II.H of this **SUPPLEMENTARY INFORMATION** section could cause a relatively small increase in burdens, while others reduce burdens and costs. The Department invites input on any area in which potential recipients of DoD awards perceive an increase in burden relative to the OMB guidance that is not justified by the commensurate value of an improvement in DoD's ability to carry out its responsibilities for good stewardship of Federal taxpayers' dollars.

## II. General Background and Detailed Overview of the DoDGARs Parts Proposed in This NPRM

### A. General Background

The first and second NPRMs in the sequence of six notices in this section of this issue of the **Federal Register** (*i.e.*, the two NPRMs preceding this one) provide additional context pertinent to the seven DoDGARs parts proposed in this NPRM. In particular, the NPRM immediately preceding this one proposes a new DoDGARs part that establishes a standard award format for DoD Components' grants and cooperative agreements. That format has three major elements, the third of which is the general terms and conditions that address administrative requirements, national policy requirements, and programmatic requirements.

This notice proposes seven DoDGARs parts that establish a standard organization and content for the administrative requirements portion of the general terms and conditions in awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. Those are the types of recipient entities addressed by the OMB guidance to Federal agencies on administrative requirements, cost principles, and audit requirements that is in 2 CFR part 200. Therefore, the seven new DoDGARs parts proposed in this notice also comprise the proposed DoD implementation of that guidance as it applies to general terms and conditions.

The seven new parts proposed in this notice are in Subchapter D of Chapter XI in title 2 of the Code of Federal Regulations (note that the first of the six NPRMs in this section of this issue of

the **Federal Register** proposed the establishment of that subchapter). The first of the parts proposed in this notice, 2 CFR part 1126, provides an overview of Subchapter D. Each of the other proposed parts (2 CFR parts 1128, 1130, 1132, 1134, 1136, and 1138) addresses the organization and content of general terms and conditions for one segment of the administrative requirements, such as property administration or recipient procurement procedures.

Each of the proposed parts 1128, 1130, 1132, 1134, 1136, and 1138 is organized into subparts and appendices. The appendix to each proposed part provides standard wording of general terms and conditions for one article of general terms and conditions. For each appendix addressing a particular article, the proposed part has an associated subpart that provides the prescription for DoD Components' use of the standard wording for that article. The subpart associated with each article identifies the portions of the OMB guidance in 2 CFR part 200 that the article implements, as those portions of the guidance apply to general terms and conditions. For example:

- Appendix D to the proposed 2 CFR part 1128 contains standard wording of an article of general terms and conditions addressing revisions of budget and program plans under awards; and
- The corresponding Subpart D of that proposed part: (1) Contains the prescription for DoD Components' use of the standard wording in appendix D when constructing that article of their general terms and conditions; and (2) in section 1128.400, lists the portions of the OMB guidance that the article implements.

Organizing the proposed parts 2 CFR 1128 through 1138 in that manner more clearly differentiates requirements for recipients from those for DoD awarding officials or administering officials than the DoDGARs have done previously. In the past, it was not unusual for a DoDGARs paragraph on administrative requirements to include requirements for both DoD Components and recipients, which made it more difficult for each intended audience to determine what the regulations required of them. For example, DoDGARs requirements on revisions to budget and program plans for both DoD Components and institutions of higher education or nonprofit recipients were interwoven in section 32.25 of 32 CFR part 32 (the now-superseded DoD implementation of OMB Circular A-110). With the organization of the content in the proposed parts 2 CFR 1128 through 1138, requirements for DoD Component

officials are in the subparts of the parts and therefore separate from requirements for recipients, which are communicated through award terms and conditions based on the standard wording in the appendices to the parts. That organization should make it easier for all affected parties to understand the applicable requirements and, therefore, to comply with them.

Three other features of the proposed parts with standard wording of general terms and conditions are designed to further promote ease of understanding for those who need to use and comply with them.

- The proposed standard wording is in plain language, with use of personal pronouns such as “you” to denote the recipient and “we” to mean the Federal Government. Use of personal pronouns is a recognized means to help a reader better relate to words addressed to him or her and, in the case of regulations, more likely understand his or her responsibilities.

- The proposed organization of administrative requirements reflects a conscious attempt to promote clarity by grouping requirements into 39 articles of general terms and conditions that present the subject matter in the most coherent manner possible. For example, the consolidation of requirements related to subawards in twelve articles within the proposed 2 CFR part 1138 is intended to simplify a recipient’s task of determining which requirements of the prime award flow down to subrecipients.

- The proposed establishment of the standard wording in the appendices to parts in the Code of Federal Regulations enables a DoD Component to construct the administrative requirements portion of its general terms and conditions by: (1) Incorporating the standard wording of each article by reference; and (2) stating any variations it has from the standard wording of that article. Section 1120.515 in the proposed 2 CFR part 1120—the part that establishes a standard award format (see the NPRM immediately preceding this one in this section of this issue of the **Federal Register**)—strongly encourages DoD Components to use this method in their general terms and conditions, rather than including the full text of each article. Incorporating the standard wording by reference to the CFR should allow a recipient that receives awards from multiple DoD Component awarding offices to quickly identify how each office’s general terms and conditions vary from the DoD standard wording.

It should be noted that the seven parts proposed in this NPRM do not address

administrative requirements for DoD Components’ fixed-amount awards, as described in OMB guidance at 2 CFR 200.201. Fixed-amount DoD awards will be addressed by DoDGARs rules to be proposed in the future. To the extent that DoD Components permit recipients or subrecipients to make fixed-amount subawards at lower tiers below cost-type prime awards and subawards, however, the proposed 2 CFR part 1138 includes requirements for those fixed-amount subawards (an overview of that proposed part is in section II.H of this **SUPPLEMENTARY INFORMATION** section).

The remainder of this **SUPPLEMENTARY INFORMATION** section provides overviews of the seven new DoDGARs parts proposed in this NPRM. Specifically, sections II.B through H address the proposed 2 CFR parts 1126 through 1138, respectively.

#### *B. Proposed Part 1126—Subchapter D Overview*

The proposed 2 CFR part 1126 provides an overview of Subchapter D of chapter XI, title 2 of the CFR. Specifically, it:

- Provides general information about the purposes of the subchapter.
- Specifies the applicability of the subchapter. It states that the subchapter: (1) Directly applies to DoD Components; and (2) only indirectly applies to recipients through its regulation of DoD Components’ construction of the administrative requirements portion of their general terms and conditions for cost-type grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

- Specifies the conditions under which exceptions from the provisions of the subchapter are permitted. The only provision that varies from the conditions for exceptions included in OMB guidance to agencies, at 2 CFR 200.102, is a provision allowing exceptions for small awards. This continues a policy included in DoD’s interim implementation of the OMB guidance at 2 CFR part 1103, which it published in the **Federal Register** on December 19, 2014 [79 FR 76047], and broadens it to include small awards to States, local governments, and Indian tribes.

- Acknowledges the complementary relationship between the parts of the subchapter and two other DoDGARs parts that specify administrative requirements for grant and cooperative agreement awards to for-profit entities and for Technology Investment Agreements.

- Provides, in the proposed section 1126.5, a table showing a high-level summary of the contents of the other six parts of the subchapter. The table lists each article of the administrative requirements portion of the general terms and conditions that is addressed in the subchapter.

- Describes how each of the other six parts of the subchapter is organized.

#### *C. Proposed Part 1128—General Terms and Conditions on Financial and Program Management*

The proposed part 1128 addresses seven articles of general terms and conditions within the broad area of financial and program management. The seven articles are designated as FMS Articles I through VII of the general terms and conditions. The proposed standard wording for the articles is in the seven appendices to the proposed part 1128. The prescriptions to DoD Components for use of the standard wording of the articles are in the seven associated subparts of the part. The articles with their related prescriptions implement the financial and program management provisions of the OMB guidance in 2 CFR part 200, as that guidance applies to general award terms and conditions. The subjects covered by the seven articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Financial management system standards (in Subpart A and appendix A).
- Payments (in Subpart B and appendix B).
- Allowable costs, period of availability of funds, and fee or profit (in Subpart C and appendix C).
- Revision of budget and program plans (in Subpart D and appendix D).
- Non-Federal audits (in Subpart E and appendix E).
- Cost sharing or matching (in Subpart F and appendix F).
- Program income (in Subpart G and appendix G).

The following subsections II.C.1 through 7 of this **SUPPLEMENTARY INFORMATION** section focus on whether and how the proposed implementation of the OMB guidance in each article and its associated prescription for DoD Components varies from, or clarifies, the related guidance.

#### **1. Financial Management System Standards**

The proposed FMS Article I, “Financial management system standards,” and associated prescription includes no variations or clarifications relative to the portions of the OMB

guidance on financial management systems standards.

## 2. Payments

The proposed FMS Article II, "Payments," and associated prescription include one variation and one clarification relative to the guidance on payments:

- The variation is relative to OMB guidance at 2 CFR 200.305(b)(3), which concerns the timing of awarding agency payments to recipients. The OMB guidance states that an awarding agency must make payment within 30 calendar days after receipt of the billing, unless the agency reasonably believes the request to be improper. The proposed prescription for DoD Components in 2 CFR 1128.215(c)(4) implements that guidance for general terms and conditions of construction awards that specify reimbursement as the payment method. That proposed prescription states that DoD generally makes, rather than "must" make, payment within 30 calendar days after receipt of the request. This continues existing DoD policy for awards to institutions of higher education and nonprofit organizations, which is cited at 2 CFR 1103.205 in DoD's interim implementation of the OMB guidance, and broadens the policy to States, local governments, and Indian tribes. Note that this proposed wording in FMS Article II is limited to the general terms and conditions of construction awards. For non-construction awards, the reimbursement method should be used only in award-specific terms and conditions because the general terms and conditions of those awards authorize recipients to request advance payments as long as they maintain, or demonstrate the willingness to maintain, written procedures to minimize the time elapsing between their receipt of each payment and disbursement of the funds for program purposes.

- The clarification relates to OMB guidance in 2 CFR 200.305(b)(9), which states that a recipient may retain up to \$500 per year in interest it earns on advance payments. The proposed paragraph B.6.d of FMS Article II, clarifies that the \$500 limit applies to the aggregate amount of interest a recipient earns annually under all of its Federal grants and cooperative agreements and not separately to the amount it earns under each award.

## 3. Allowable Costs, Period of Availability of Funds, and Fee or Profit

The proposed FMS Article III, "Allowable costs," and associated prescription supplement the OMB

guidance, as well as implement it, by providing a central source within the general terms and conditions for requirements on whether and when costs incurred by recipients, subrecipients, and contractors under awards and subawards are allowable. It also includes the long-standing DoDGARs policy on fee or profit. The proposed article includes one variation and two clarifications relative to the OMB guidance in 2 CFR 200.461 on the allowability of costs associated with professional journal publications:

- The variation is a specification in Section B of FMS Article III that costs of publishing in professional journals are allowable only if the recipient charges them consistently, either as direct or indirect costs. The purpose of this specification is to ensure that the Government does not pay more than its fair share of journal publication costs that are increasingly being addressed through charges that authors pay prior to publication. That can happen if an institution directly charges those payments for federally supported researchers to their Federal awards while including payments by other researchers in a pool of costs, a share of which the Government reimburses as indirect costs charged to Federal awards.

- The first clarification also is in Section B of the article and is intended to help avoid confusion that might result from the use of the wording "cost of publication or sharing of research results" in 2 CFR 200.461(b)(3). That wording could be interpreted to mean something broader than "charges for professional journal publications," which is the wording in the lead-in 2 CFR 200.461(b) that should circumscribe the costs allowed under § 200.461(b)(3).

- The other clarification is in paragraph C.3 of FMS Article III. It clarifies wording in 2 CFR 200.461(b)(3) indicating that a recipient may charge an award up to the time of closeout of the award for costs of publishing in professional journals that are incurred after the end of the period of performance. The proposed clarification provides that the recipient may charge those costs to an award if its request for payment of the costs is received no later than the date on which it submits its final financial report under the award. That clarification is needed because the closeout process relies on the final financial report being the ultimate statement of financial status. Any subsequent change in financial status due to incurrence of additional publication costs would disrupt the ongoing closeout process and create

added burdens and costs for DoD's award administration office, which would have to require the recipient to submit a revised final report.

## 4. Revision of Budget and Program Plans

The proposed FMS Article IV, "Revision of budget and program plans," and associated prescription include no variations or clarifications relative to the guidance on changes in a recipient's budget and program plans.

## 5. Non-Federal Audits

The proposed FMS Article V, "Non-Federal audits," and associated prescription supplement, as well as implement, the OMB guidance by providing a central location within the general terms and conditions at which a recipient can find requirements for non-Federal audits of all types of recipients and subrecipients, including for-profit entities. The proposed article and prescription include no variations or clarifications relative to portions of the OMB guidance that they implement.

## 6. Cost Sharing or Matching

The proposed FMS Article VI, "Cost sharing or matching," and associated prescription include no variations or clarifications relative to the OMB guidance on cost sharing or matching. Paragraph E.2 of the proposed article does refer to a clarification contained in another article of the general terms and conditions, PROP Article I. That clarification, which concerns the Federal interest in property donated to a project under an award, is addressed in the discussion of PROP Article I in subsection II.D.1 of this **SUPPLEMENTARY INFORMATION** section.

## 7. Program Income

The prescription for DoD Components related to FMS Article VII, "Program Income," which is in subpart G of the proposed 2 CFR part 1128, includes one clarification from the OMB guidance in 2 CFR part 200. The prescription permits a DoD Component's general terms and conditions to specify a combination of the three alternatives that the OMB guidance identifies for recipients' use of program income—*i.e.*, the additive, deductive, and cost sharing or matching alternatives. This is a clarification because the guidance in 2 CFR part 200 does not explicitly recognize that an award may use more than one of the three alternatives. This clarification provides continuity with previous Governmentwide and DoD policy that permitted use of more than one alternative. Specifically, use of a combination of alternatives was allowed for awards to:

- Institutions of higher education and other nonprofit organizations under OMB Circular A–110 and the associated DoD implementation in DoDGARs part 32 (32 CFR part 32).

- States, local governments, and Indian tribes under the Governmentwide common rule implementing OMB Circular A–102, which was adopted by DoD in DoDGARs part 33 (32 CFR part 33).

#### *D. Proposed Part 1130—General Terms and Conditions on Property Administration*

The proposed part 1130 addresses six articles of general terms and conditions concerning property acquired by recipients under awards and federally owned property furnished to recipients by the Government. The articles are designated as PROP Articles I through VI of the general terms and conditions. The proposed standard wording for the articles is in appendices A through F to the proposed part. The prescriptions for DoD Components' use of the standard wording is in the associated Subparts A through F of the proposed part. The articles with their related prescriptions implement the property administration provisions of the OMB guidance in 2 CFR part 200, as that guidance pertains to general award terms and conditions. The subjects covered by the six articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Title to property (in Subpart A and appendix A)
- Recipients' property management systems (in Subpart B and appendix B)
- Use and disposition of real property (in Subpart C and appendix C)
- Use and disposition of equipment and supplies (in Subpart D and appendix D)
- Use and disposition of federally owned property (in Subpart E and appendix E)
- Intangible property (in Subpart F and appendix F)

The following subsections II.D.1 through 6 of this **SUPPLEMENTARY INFORMATION** section focus on whether and how the proposed implementation of the guidance in each article and its associated prescription for DoD Components varies from, or clarifies, the related OMB guidance.

##### 1. Title to Property

The proposed PROP Article I, "Title to property," and associated prescription implement portions of the OMB guidance that address title vesting and the property trust relationship.

They implement the guidance with no variations.

##### 2. Property Management System

The proposed PROP Article II, "Property management system," and associated prescription implement portions of the OMB guidance that specify the standards for a recipient's property management system. The proposed implementation includes one variation from the guidance.

The one variation is the inclusion of property management system requirements for federally owned property. Although the OMB guidance in 2 CFR part 200 does not explicitly address those management system requirements, they are needed to ensure proper stewardship of any federally owned property for which a recipient is accountable under an award. The requirements are included for States in Section B of the proposed PROP Article II and for institutions of higher education, nonprofit organizations, local governments, and Indian tribes in Section C of the proposed article. The requirements in the proposed PROP Article II continue long-standing DoD policy in the DoDGARs, for States under 32 CFR 33.32(f) and for other recipients under 32 CFR 32.34(f). Those requirements also were included at 2 CFR 1103.201 in the interim DoD implementation of the guidance in 2 CFR part 200.

##### 3. Use and Disposition of Real Property

The proposed PROP Article III, "Use and disposition of real property," and associated prescription implement the portions of the OMB guidance pertinent to that subject. The proposed implementation includes one variation from the guidance.

The variation is that the proposed article authorizes a recipient's use of real property acquired under an award for other projects or programs either: (1) During its use on the project or program for which it was acquired, on a non-interfering basis; or (2) subsequently, by deferral of final disposition of the property, if the recipient obtains DoD approval for use on other federally sponsored projects or programs with purposes consistent with those supported by the award. The use on a non-interfering basis during the performance period of the award parallels provisions in the OMB guidance at 2 CFR 200.313(c)(2) for equipment acquired under an award. The potential to use real property after the end of the performance period continues long-standing policy in the DoDGARs at 32 CFR 32.32(b) for awards to institutions of higher education,

hospitals, and other nonprofit organizations and extends that policy to States, local governments, and Indian tribes.

##### 4. Use and Disposition of Equipment and Supplies

The proposed PROP Article IV, "Use and disposition of equipment and supplies," and associated prescription implement the portions of the OMB guidance on that subject. The proposed implementation includes one variation from the guidance.

##### 5. Use and Disposition of Federally Owned Property

The proposed PROP Article V, "Use and disposition of federally owned property," and associated prescription implement the OMB guidance on that subject, with no variations or clarifications relative to the guidance.

##### 6. Intangible Property

The proposed PROP Article VI, "Intangible property," and associated prescription implement the provisions of the OMB guidance that address copyrights, inventions, and data. The proposed implementation includes one clarification of the guidance.

The one clarification, which is in Section D of the proposed article, relates to a patent, patent application, copyright, or other intangible property that is acquired under an award by a means other than being developed or produced under the award. This is an important distinction because policies concerning vesting of title to the property and use and disposition of the property appropriately differ from the corresponding policies for intangible property that is developed or produced under awards. This distinction was previously made in the DoDGARs at 32 CFR 32.36(e) for awards to institutions of higher education, hospitals, and other nonprofit organizations, and was included for awards to those types of recipients in DoD's interim implementation of the OMB guidance at 2 CFR 1103.215. The incorporation into PROP Article VI extends the distinction to awards DoD Components make to States, local governments, and Indian tribes.

#### *E. Proposed Part 1132—General Terms and Conditions on Recipient Procurement Procedures*

The proposed part 1132 addresses three articles of general terms and conditions specifying procedural requirements for recipients' purchases of property and services under awards. The articles, which are designated as PROC Articles I through III, are in

appendices A through C to the proposed part. The prescriptions for DoD Components' use of the standard wording of the articles are in the corresponding Subparts A through C of the proposed part. The articles and the associated prescriptions implement the procurement provisions of the OMB guidance in 2 CFR part 200 as they relate to general award terms and conditions. The subjects covered by the articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Procurement standards for States (in Subpart A and appendix A)
- Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes (in Subpart B and appendix B)
- Contract provisions for recipient procurements (in Subpart C and appendix C)

The following subsections II.E.1 through 3 of this **SUPPLEMENTARY INFORMATION** section address whether and how the proposed implementation of the guidance in each article and its associated prescription for DoD Components varies from, or clarifies, the related OMB guidance.

#### 1. Procurement Standards for States

The proposed PROC Article I, "Procurement standards for States," and the associated prescription implement the OMB guidance on those standards, with no variations or clarifications relative to the guidance.

#### 2. Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes

The proposed PROC Article II, "Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes," and the associated prescription implement the OMB guidance on those standards, with no clarifications or variations relative to the guidance.

#### 3. Contract Provisions for Recipient Procurements

The proposed PROC Article III, "Contract provisions for recipient procurements," and the associated prescription implement the OMB guidance on that subject, with no variations or clarifications relative to the guidance.

#### F. Proposed Part 1134—General Terms and Conditions on Reporting

The proposed part 1134 addresses four articles of general terms and

conditions on recipient reporting requirements. The articles are designated as REP Articles I through IV and are in appendices A through D to the proposed part. The associated prescriptions for DoD Components are in Subparts A through D of the proposed part. The articles and associated prescriptions implement the provisions of the OMB guidance in 2 CFR part 200 on reporting, as those provisions relate to general award terms and conditions. The subjects covered by the articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Performance management, monitoring, and reporting (in Subpart A and appendix A)
- Financial reporting (in Subpart B and appendix B)
- Reporting on property (in Subpart C and appendix C)
- Reporting on subawards and executive compensation (in Subpart D and appendix D)

The following subsections II.F.1 through 4 of this **SUPPLEMENTARY INFORMATION** section address whether and how the proposed implementation of the guidance in each article and its associated prescription for DoD Components varies from, or clarifies, the related OMB guidance.

#### 1. Performance Management, Monitoring, and Reporting

The proposed REP Article I, "Performance management, monitoring, and reporting," implements portions of the OMB guidance pertinent to that subject. It does so with no variations or clarifications relative to the guidance.

#### 2. Financial Reporting

The proposed REP Article II, "Financial reporting," implements the OMB guidance on that subject, with one clarification. That clarification is in Section D of the proposed article and the related prescription for DoD Components. Section D authorizes recipients to request extensions of due dates for interim and final financial reports. That authorization continues long-standing DoD policy in: (1) The DoDGARs at 32 CFR 32.52(a) and underlying provisions of OMB Circular A-110 for awards to institutions of higher education, hospitals, and other nonprofit organizations; and (2) the DoDGARs at 32 CFR 33.41(a)(7) and the underlying Governmentwide common rule for awards to States, local governments, and Indian tribes.

#### 3. Property Reporting

The proposed REP Article III, "Property reporting," provides a single

location within the general terms and conditions at which a recipient may find all of the property reporting requirements listed. With its associated prescription, it implements portions of the OMB guidance concerning property reporting that are not implemented in other articles of the general terms and conditions. For the reporting requirements that are addressed in other articles, the proposed REP Article III includes references to those articles rather than restating the requirements. The proposed article and prescription include no variations or clarifications relative to the guidance.

#### 4. Reporting on Subawards and Executive Compensation

The proposed REP Article IV, "Reporting on subawards and executive compensation," directly implements the Governmentwide guidance in 2 CFR part 170 that is based on statutory reporting requirements in the Federal Funding Accountability and Transparency Act, as amended. The proposed article also implements portions of the OMB guidance in 2 CFR part 200 that cite those statutory requirements and 2 CFR part 170. The proposed article includes no variations or clarifications relative to the guidance it implements.

#### G. Proposed Part 1136—General Terms and Conditions on Other Administrative Requirements

The proposed part 1136 addresses seven articles of general terms and conditions. The seven articles specify the recipients' and Government's rights and responsibilities in areas of administrative requirements other than financial and program management, property administration, recipient procurement procedures, and reporting (which are the four areas addressed in the proposed parts 1128, 1130, 1132, and 1134 and discussed in sections II.C through F of this **SUPPLEMENTARY INFORMATION** section). The articles and associated prescriptions for DoD Components implement the OMB guidance in 2 CFR part 200 in these other areas of administrative requirements, as the guidance relates to general award terms and conditions.

The articles are designated as OAR Articles I through VII and are in appendices A through G to the proposed part. The associated prescriptions are in Subparts A through G of the proposed part. The subjects covered by the articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Submitting and maintaining recipient information (in Subpart A and appendix A)
- Records retention and access (in Subpart B and appendix B)
- Remedies and termination (in Subpart C and appendix C)
- Claims, disputes, and appeals (in Subpart D and appendix D)
- Collection of amounts due (in Subpart E and appendix E)
- Closeout (in Subpart F and appendix F)
- Post-closeout adjustments and continuing responsibilities (in Subpart G and appendix G)

The following subsections II.G.1 through 7 of this **SUPPLEMENTARY INFORMATION** section address whether and how the proposed implementation of the guidance in each article and its associated prescription for DoD Components varies from, or clarifies, the related OMB guidance.

#### 1. Submitting and Maintaining Recipient Information

The proposed OAR Article I, “Submitting and maintaining recipient information,” and related prescription for DoD Components addresses requirements to register in the System for Award Management, report information to the Federal Awardee Performance and Integrity Information System (FAPIS), and disclose evidence of certain integrity-related matters to the DoD Inspector General. It thereby implements OMB guidance in 2 CFR part 25, 2 CFR 200.113, and 200.210(b)(1)(iii). The article includes one clarification of the guidance.

The clarification concerns the guidance in 2 CFR 200.113 that relates to mandatory disclosures of certain violations of Federal criminal law. The proposed implementation in Section C of OAR Article I provides more specifics than the OMB guidance—*e.g.*, by specifying transmission of the information to the DoD Inspector General’s office and grants officer and providing assurances about the safeguarding of the information provided to the Government.

#### 2. Records Retention and Access

The proposed OAR Article II, “Records retention and access,” and associated prescription for DoD Components implement the OMB guidance on that subject in 2 CFR part 200. They do so with two clarifications.

The first clarification concerns the period during which the Government may disallow costs and recover funds on the basis of an audit or other review of a recipient. The three portions of the OMB guidance in 2 CFR part 200

pertinent to this clarification are in: (1) 2 CFR 200.333(b) on records retention requirements, which states that an agency may extend the records retention period by notifying the recipient in writing; (2) 2 CFR 200.336(c), which states that the Government’s right to access records is not limited to the records retention period but lasts as long as the recipient retains the records; and (3) 2 CFR 200.344 on post-closeout adjustments, which states that an agency must make any cost disallowance determination and notify the recipient within the record retention period. To conform the period during which DoD may disallow costs with the period during which it may access the recipient’s records, the proposed OAR Article II specifies that the recipient is not required to retain records beyond the standard records retention period delineated in 2 CFR 200.333 but, if it elects to do so, the records retention period for purposes of post-closeout adjustments is extended to be the same as the period during which the records are retained. This provision in OAR Article II thereby provides the written notification to recipients that is described in 2 CFR 200.333(b).

The second clarification concerns the retention period for records concerning exempt property. The clarification, which is in paragraph A.1 of the proposed article, is that the recipient must keep whatever property records it needs to keep for exempt property acquired under a DoD award, for as long as it needs to keep them, to ensure that any residual Federal share of the value of that property is not later used as a contribution toward cost sharing or matching requirements of another Federal award.

#### 3. Remedies and Termination

The proposed OAR Article III, “Remedies and termination,” and related prescription for DoD Components implement the OMB guidance on that subject in 2 CFR part 200. The article and prescription include one variation from, and two clarifications of, the guidance.

The one variation is with respect to OMB guidance in 2 CFR 200.342 that describes the conditions under which costs incurred during a suspension or after a termination are allowable. To avoid potential confusion, Section C segregates the implementation of the guidance into two paragraphs: (1) Paragraph C.1, to address costs resulting from obligations incurred by a recipient before the effective date of the suspension or termination; and (2) paragraph C.2, to address costs resulting from obligations incurred after that

effective date. Paragraph C.1 includes one condition not explicitly stated in the OMB guidance, which is that costs resulting from obligations incurred before the date of a termination are allowable only if they are noncancellable after the termination. This will provide good stewardship of Federal funds by restoring a long-standing DoDGARs requirement for allowability of costs in the case of termination, previously in 32 CFR 32.62(c) for awards to institutions of higher education, hospitals, and other nonprofit organizations, and in 32 CFR 33.43(c) for awards to States, local governments, and Indian tribes.

The two clarifications are with respect to OMB guidance in:

- 2 CFR 200.339(a)(1), which specifies that a Federal agency may unilaterally terminate an award based on a recipient’s failure to comply with award terms and conditions. To make clear that there must be an adequate reason for a DoD Component to unilaterally terminate an award, which is a serious remedy, paragraph B.1.a of the proposed article affirms that the DoD standard is a recipient’s “material” failure to comply with award terms and conditions.

- 2 CFR 200.339(a)(2), which adds termination for cause as a basis for unilateral termination of an award by the Government. For added clarity, since “termination for cause” is not defined and likely would be interpreted by DoD officials to be the same as termination for default (*i.e.*, material failure to comply with award terms and conditions), paragraph B.1.a of the proposed article describes that added basis for a DoD Component’s unilateral termination in plain language.

#### 4. Claims, Disputes, and Appeals

The proposed OAR Article IV, “Claims, disputes and appeals,” and associated prescription for DoD Components implement existing DoDGARs requirements in 32 CFR 22.810. They also implement the OMB guidance in 2 CFR 200.341 on recipients’ opportunities to object to remedies taken for non-compliance. The article and prescription do so with no variations or clarifications relative to the guidance.

#### 5. Collection of Amounts Due

The proposed OAR Article V, “Collection of amounts due,” and related prescription for DoD Components implement the OMB guidance on that subject, which is in 2 CFR 200.345. The article does not vary from the guidance but does clarify that the existing DoDGARs procedures in 32

CFR 22.820 for issuing demands for payment and transferring debts for collection continue to apply. That same clarification is stated at 2 CFR 1103.225 in DoD's interim implementation of the OMB guidance in 2 CFR part 200.

#### 6. Closeout

The proposed OAR Article VI, "Closeout," implements the OMB guidance on that subject. The article includes no variations or clarifications relative to the guidance.

#### 7. Post-closeout Adjustments and Continuing Responsibilities

The proposed OAR Article VII, "Post-closeout adjustments and continuing responsibilities," and associated prescription for DoD Components implement the OMB guidance on that subject. It does so with no variations or clarifications relative to the guidance.

#### *H. Proposed Part 1138—General Terms and Conditions on Requirements Related to Subawards*

The proposed part 1138 addresses twelve articles of general terms and conditions related to subawards that institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes make to all types of subrecipient entities under DoD Components' grants and cooperative agreements. The articles and associated prescriptions for DoD Components implement the OMB guidance in 2 CFR part 200 concerning subawards, as that guidance relates to general terms and conditions.

The articles are designated as SUB Articles I through XII and are in appendices A through L to the proposed part. The associated prescriptions are in Subparts A through L of the proposed part. The subjects covered by the articles (and the appendices and subparts containing the articles and associated prescriptions) are:

- Distinguishing subawards and procurements (in Subpart A and appendix A)
- Pre-award and time of award responsibilities (in Subpart B and appendix B)
- Informational content of subawards (in Subpart C and appendix C)
- Financial and program management requirements for subawards (in Subpart D and appendix D)
- Property requirements for subawards (in Subpart E and appendix E)
- Procurement procedures to include in subawards (in Subpart F and appendix F)
- Financial, programmatic, and property reporting requirements for

subawards (in Subpart G and appendix G)

- Other administrative requirements for subawards (in Subpart H and appendix H)
- National policy requirements for subawards (in Subpart I and appendix I)
- Subrecipient monitoring and other post-award administration (in Subpart J and appendix J)
- Requirements concerning subrecipients' lower-tier subawards (in Subpart K and appendix K)
- Fixed-amount subawards (in Subpart L and appendix L)

The following subsections II.H.1 through 12 describe these twelve articles and each instance in which an article or its associated prescription for DoD Components varies from, or clarifies, the related OMB guidance in a way not already described in sections II.C through II.G of this **SUPPLEMENTARY INFORMATION** section. The reason that some variations and clarifications already were described in sections II.C through II.G is that SUB Articles IV through VIII address the administrative requirements that recipients are to include in their subaward terms and conditions. In doing so, SUB Articles IV through VIII often instruct recipients to flow down to subrecipients the same administrative requirement that applies to recipients, which therefore is in one of the 27 articles of general terms and conditions described in sections II.C through II.G of this **SUPPLEMENTARY INFORMATION** section. For any of those articles that varies from or clarifies the OMB guidance, that variation or clarification is described in sections II.C through II.G and will not be described again in the following subsections II.H.1 through 12.

#### 1. Distinguishing Subawards and Procurements

The proposed SUB Article I, "Distinguishing subawards and procurements," addresses the need for a recipient to determine the nature of each transaction into which it enters at the next lower tier under its award.

#### 2. Pre-award and Time of Award Responsibilities

The proposed SUB Article II, "Pre-award and time of award responsibilities," and associated prescription for DoD Components include no variations or clarifications relative to the pertinent portions of the OMB guidance.

#### 3. Informational Content of Subawards

The proposed SUB Article III, "Informational content of subawards,"

and the related prescription for DoD Components include one variation relative to the OMB guidance. The variation is from the guidance in 2 CFR 200.331(a)(1)(xiii) that provides for the recipient's inclusion of the subrecipient's indirect cost rate as an information element in every subaward. Because many nonprofit and for-profit entities deem their indirect cost rates to be proprietary, in order to protect confidential business information, the proposed SUB Article III varies from the guidance by providing flexibility for a recipient in that situation to exclude information about the subrecipient's indirect cost rate from the subaward.

#### 4. Financial and Program Management Requirements for Subawards

The proposed SUB Article IV, "Financial and program management requirements for subawards," addresses the types of administrative requirements for subawards that FMS Articles I through VII address for awards under which the subawards are made.

#### 5. Property Requirements for Subawards

The proposed SUB Article V, "Property requirements for subawards," covers the property administration requirements for subawards that PROP Articles I through VI cover for awards under which the subawards are made. SUB Article V and the related prescription for DoD Components include one clarification relative to the OMB guidance that sections II.D.1 through 6 of this **SUPPLEMENTARY INFORMATION** section did not already describe. The added clarification is that a subrecipient would submit a request for property disposition instructions through the recipient, and not directly to DoD as a recipient would do.

#### 6. Procurement Procedures To Include in Subawards

The proposed SUB Article VI, "Procurement procedures to include in subawards," addresses the types of administrative requirements for subawards that PROC Articles I through III address for awards under which the subawards are made. SUB Article VI and the associated prescription for DoD Components include no variations or clarifications relative to the OMB guidance that sections II.E.1 through 3 of this **SUPPLEMENTARY INFORMATION** section did not already describe.

#### 7. Financial, Programmatic, and Property Reporting Requirements for Subawards

The proposed SUB Article VII, "Financial, programmatic, and property reporting requirements for subawards,"



covers the types of reporting for subawards that REP Articles I through IV cover for awards under which the subawards are made. SUB Article VII and the related prescription for DoD Components include no variations or clarifications relative to the OMB guidance that sections II.F.1 through 4 of this **SUPPLEMENTARY INFORMATION** section did not already describe.

#### 8. Other Administrative Requirements for Subawards

The proposed SUB Article VIII, “Other administrative requirements for subawards,” covers the administrative requirements for subawards that OAR Articles I through VII cover for awards under which the subawards are made. SUB Article VIII and the related prescription for DoD Components include no variations or clarifications relative to the OMB guidance.

#### 9. National Policy Requirements for Subawards

The proposed SUB Article IX, “National policy requirements for subawards,” addresses the flow down to subawards of the requirements in NP Articles I–IV, which are addressed in the DoDGARs parts proposed in the NPRM following this one in this section of this issue of the **Federal Register**. SUB Article IX and the related prescription for DoD Components include two clarifications relative to the pertinent portions of the OMB guidance in 2 CFR part 200. The clarifications are that a recipient must immediately alert the DoD office administering its award if:

- An entity to which the recipient is about to make a subaward will not accept a subaward provision requiring the subrecipient’s compliance with an applicable national policy requirement; or
- At any time during the performance of a subaward, the recipient learns that—or receives a credible allegation that—the subrecipient is not complying with an applicable national policy requirement.

#### 10. Subrecipient Monitoring and Other Post-Award Administration

The proposed SUB Article X, “Subrecipient monitoring and other post-award administration,” addresses requirements for recipients’ monitoring of subrecipients and related post-award administration of subawards that they make under DoD grants and cooperative agreements. SUB Article X and the related prescription for DoD Components include no variations or clarifications relative to the OMB guidance.

#### 11. Requirements Concerning Subrecipients’ Lower-Tier Subawards

The proposed SUB Article XI, “Requirements concerning subrecipients’ lower-tier subawards,” specifies requirements that a recipient must include in any subaward in which it judges that the subrecipient may make lower-tier subawards. SUB Article XI and the associated prescription for DoD Components include no variations or clarifications relative to the OMB guidance that sections II.H.1 through 10 of this Supplementary Information section did not already address.

#### 12. Fixed-Amount Subawards

The proposed SUB Article XII, “Fixed-amount subawards,” specifies policy and procedures concerning recipients’ use of fixed-amount subawards under DoD grants and cooperative agreements. The article and associated prescription for DoD Components includes two variations relative to the OMB guidance concerning fixed-amount subawards. Specifically, SUB Article XII does not provide for:

- A subrecipient’s certification to the recipient at the end of the subaward that it completed the project or activity or expended the level of effort, as described in the OMB guidance at 2 CFR 200.201(b)(3). A certification is not needed because the article defines appropriate uses of a fixed-amount subaward based on well-defined outcomes that are sufficiently observable and verifiable by the recipient so as to obviate the need to rely on a subrecipient’s assurances. The article clarifies that outcomes are distinct from inputs, such as level of effort, needed to achieve the outcomes.
- The need for a recipient’s prior approval for a change in the subrecipient’s principal investigator or other project leader, as described in the OMB guidance at 2 CFR 200.201(b)(5). It is inappropriate to require prior approvals for changes in inputs, such as which individuals carry out the project or program, because the article links the appropriate use of fixed-amount subawards to well-defined outcomes.

### III. Relationship of Administrative Requirements in This NPRM to Future DoD Implementation of the OMB Guidance

As noted in section III of the Supplementary Information section of the first of the NPRMs in this section of this issue of the **Federal Register**, DoD will complete the remaining needed updates of the DoDGARs in a subsequent set of proposals for public

comment. That future set of proposals will include implementation of the OMB guidance on administrative requirements in 2 CFR part 200 as it applies to both: (1) award-specific terms and conditions of DoD Components’ grants and cooperative agreements; and (2) post-award administration. Those future proposals will complement the proposed DoDGARs parts 1128 through 1138 in this NPRM, which implement the guidance on administrative requirements as it applies to general award terms and conditions.

The reason for these separate implementations is that they address distinct audiences at different points during the award life cycle. The implementation in this NPRM addresses an individual in a DoD awarding office who is responsible for drafting general terms and conditions to be used in the office’s many future awards under one or more programs with similar requirements (*e.g.*, its research programs or its training programs). In contrast, the implementations of the guidance as it applies to:

- Award-specific terms and conditions will address awarding officials in that awarding office who will later be making the individual awards under the programs. The portions of the DoDGARs addressing those officials must be tailored to their responsibilities, which include considering the specific circumstances of each award before deciding which, if any, provisions in the general terms and conditions need to be supplemented or even overridden by terms and conditions specific to that award.
- Post-award administration will address officials responsible for subsequently administering the awards. In DoD, those officials often are located in offices specifically designated to provide award administration services that are organizationally and physically separate from the awarding offices. The officials’ responsibilities differ in kind and not just in degree from those of the awarding officials. Again, the portions of the DoDGARs addressing those officials needs to be tailored to their distinct responsibilities.

Segregating the DoDGARs implementation of the guidance for these three sets of DoD officials enables the regulations to more clearly address each of the different audiences. Doing so makes it easier for each audience to understand what the regulations require of them, and thereby promotes compliance.

### IV. Desired Inputs

DoD welcomes comments on all aspects of the seven proposed parts in

this NPRM, as inputs from affected entities will help make the final regulations better. Questions on which commenters' inputs would be helpful include:

- Do the seven proposed parts appear to include any substantive variations from the OMB guidance in 2 CFR part 200, as that guidance applies to general award terms and conditions—other than those noted in section II of this Supplementary Information section?

- In each of the proposed parts 1128 through 1138, does the separation of administrative requirements into two portions—*i.e.*, the wording of terms and conditions for recipients in the appendices to the part and the prescriptions for DoD Components in the corresponding subparts of the part—help make requirements clearer for affected parties?

- Does the use of plain language and pronouns improve the readability and understandability of the content of the proposed parts?

## V. 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; specify performance objectives, to the extent feasible, 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 of 2 CFR part 200 that includes standard wording of general terms and conditions for DoD Components' grant and cooperative agreement awards will maximize long-term benefits in relation to costs and burdens for recipients of those awards. In providing—for the first time—uniformity across research and other awards, the approach will benefit institutions of higher education and other types of recipients that receive awards from diverse defense programs and numerous DoD Component awarding offices. The Department informally consulted representatives of the most affected recipient community during development of this regulatory

proposal. This rule has been designated a “significant regulatory action” under section 3(f) of Executive Order 12866, although not an economically significant one. Accordingly, the rule has been reviewed by OMB.

### Unfunded Mandates Reform Act of 1995

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

### Regulatory Flexibility Act

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

### Paperwork Reduction Act

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

### Executive Order 13132, “Federalism”

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

### List of Subjects

#### 2 CFR Part 1126

Cooperative agreements, Grant programs, Grants administration.

#### 2 CFR Part 1128

Accounting, Business and Industry, Cooperative agreements, Grants

administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

#### 2 CFR Part 1130

Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

#### 2 CFR Part 1132

Business and Industry, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

#### 2 CFR Part 1134

Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

#### 2 CFR Part 1136

Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

#### 2 CFR Part 1138

Accounting, Business and Industry, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Small business, State and local governments.

■ Accordingly, under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, 2 CFR chapter XI, subchapter D, is proposed to be amended by adding parts 1126, 1128, 1130, 1132, 1134, 1136, and 1138 to read as follows:

## PART 1126—SUBCHAPTER D OVERVIEW

### Sec.

- 1126.1 Purposes of this subchapter.
- 1126.2 Applicability of this subchapter.
- 1126.3 Exceptions from requirements in this subchapter.
- 1126.4 Relationship to other portions of the DoD grant and agreement regulations.
- 1126.5 Organization of this subchapter.
- 1126.6 Organization of the other parts of this subchapter.

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

### § 1126.1 Purposes of this subchapter.

This subchapter of the DoD Grant and Agreement Regulations:

- (a) Addresses general terms and conditions governing administrative

requirements for DoD Components' cost-type grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes. It does so by providing:

(1) A standard organization of the administrative requirements into articles of general terms and conditions, each of which is in a specific subject area.

(2) Standard wording for those articles; and

(3) Associated prescriptions for DoD Component's use of the standard wording to construct their general terms and conditions, which allow for adding, omitting, or varying in other ways from the standard wording in certain situations.

(b) Thereby implements OMB guidance in 2 CFR part 200 as it relates to general terms and conditions of grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

**§ 1126.2 Applicability of this subchapter.**

(a) *Entities.* This subchapter:

(1) Applies to DoD Components that make cost-type grant and cooperative agreement awards to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

(2) Does not directly impose requirements on a recipient of a DoD Component's award but does do so indirectly, through the DoD Component's compliance with this subchapter when it constructs its general award terms and conditions. The terms and conditions delineate the rights and responsibilities of the

recipient and the Federal Government under the award.

(b) *Awards.* This subchapter applies to DoD Components' cost-type grants and cooperative agreements to types of entities identified in paragraph (a)(1) of this section, other than Technology Investment Agreements that are addressed in 32 CFR part 37.

**§ 1126.3 Exceptions from requirements in this subchapter.**

(a) *Exceptions that are not permitted.* A DoD Component may not grant any exception to the requirements in this subchapter if the exception is:

(1) Prohibited by statute, executive order, or regulation;

(2) Inconsistent with the OMB implementation of the Single Audit Act in Subpart F of 2 CFR part 200.

(b) *Other exceptions.* Other exceptions are permitted from requirements in this subchapter for institutions of higher education, nonprofit organizations, States, local governments and Indian tribes, as follows:

(1) *Statutory or regulatory exceptions.* A DoD Component's general terms and conditions may incorporate a requirement that is inconsistent with the requirements in this subchapter if that requirement is specifically authorized or required by a statute or regulation adopted in the Code of Federal Regulations after opportunity for public comment.

(2) *Individual exceptions.* The Head of the DoD Component or his or her designee may approve an individual exception affecting only one award in accordance with procedures stated in 32 CFR 21.340.

(3) *Small awards.* DoD Components' terms and conditions for small awards

may apply less restrictive requirements than those specified in this subchapter (a small award is an award for which the total value of obligated funding through the life of the award is not expected to exceed the simplified acquisition threshold).

(4) *Other class exceptions.* The Assistant Secretary of Defense for Research and Engineering or his or her designee may approve any class exception affecting multiple awards other than small awards, with OMB concurrence if the class exception is for a requirement that is inconsistent with OMB guidance in 2 CFR part 200. Procedures for DoD Components' requests for class exceptions are stated in 32 CFR 21.340.

**§ 1126.4 Relationship to other portions of the DoD grant and agreement regulations.**

The administrative requirements specified in this subchapter complement:

(1) Provisions of 32 CFR part 34 that address administrative requirements for DoD Components' grant and cooperative agreement awards to for-profit entities; and

(2) Requirements in 32 CFR part 37 for technology investment agreements.

**§ 1126.5 Organization of this subchapter.**

This subchapter is organized into six parts in addition to this overview part. Each part provides standard wording and prescriptions for a number of articles of general terms and conditions that address administrative requirements in a particular subject area. The following table shows the subject area and articles corresponding to each part:

In . . .	Of this subchapter, you will find terms and conditions with associated prescriptions for the following articles related to . . .
Part 1128 .....	Recipient financial and program management (designated as "FMS" when referring to articles prescribed by this part): —FMS Article I—Financial management system standards. —FMS Article II—Payments. —FMS Article III—Allowable costs, period of availability of funds, and fee or profit. —FMS Article IV—Revision of budget and program plans. —FMS Article V—Non-Federal audits. —FMS Article VI—Cost sharing or matching. —FMS Article VII—Program income.
Part 1130 .....	Property administration (designated as "PROP" when referring to articles prescribed by this part): —PROP Article I—Title to property. —PROP Article II—Property management system. —PROP Article III—Use and disposition of real property. —PROP Article IV—Use and disposition of equipment and supplies. —PROP Article V—Use and disposition of federally owned property. —PROP Article VI—Intangible property.
Part 1132 .....	Recipient procurement procedures (designated as "PROC" when referring to articles prescribed by this part): —PROC Article I—Procurement standards for States. —PROC Article II—Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes. —PROC Article III—Contract provisions for recipient procurements.

In . . .	Of this subchapter, you will find terms and conditions with associated prescriptions for the following articles related to . . .
Part 1134 .....	Financial, programmatic, and property reporting (designated as “REP” when referring to articles prescribed by this part): —REP Article I—Performance management, monitoring, and reporting. —REP Article II—Financial reporting. —REP Article III—Reporting on property. —REP Article IV—Reporting on subawards and executive compensation.
Part 1136 .....	Other administrative requirements (designated as “OAR” when referring to articles prescribed by this part): —OAR Article I—Submitting and maintaining recipient information. —OAR Article II—Records retention and access. —OAR Article III—Remedies and termination. —OAR Article IV—Claims, disputes, and appeals. —OAR Article V—Collection of amounts due. —OAR Article VI—Closeout. —OAR Article VII—Post-closeout adjustments and continuing responsibilities.
Part 1138 .....	Requirements related to subawards (designated as “SUB” when referring to articles prescribed by this part): —SUB Article I—Distinguishing subawards and procurements. —SUB Article II—Pre-award and time of award responsibilities. —SUB Article III—Informational content of subawards. —SUB Article IV—Financial and program management requirements for subawards. —SUB Article V—Property requirements for subawards. —SUB Article VI—Procurement procedures to include in subawards. —SUB Article VII—Financial, programmatic, and property reporting requirements for subawards. —SUB Article VIII—Other administrative requirements for subawards. —SUB Article IX—National Policy Requirements for Subawards. —SUB Article X—Subrecipient monitoring and other post-award administration. —SUB Article XI—Requirements concerning subrecipients’ lower-tier subawards. —SUB Article XII—Fixed-amount subawards.

#### § 1126.6 Organization of the other parts of this subchapter.

(a) Each of parts 1128 through 1138 of this subchapter is organized into a number of subparts and appendices.

(1) Each appendix provides the standard wording of general terms and conditions for one of the articles of general terms and conditions that the part addresses.

(2) For each appendix addressing a particular article, the part has an associated subpart that provides the prescription for DoD Components’ use of the standard wording for that article.

(b) For example, the table in § 1126.5 indicates that 2 CFR part 1128 provides the standard wording of general terms and conditions for FMS Articles I through VII and the prescriptions for DoD Components’ use of that standard wording.

(1) FMS Article I on financial management system standards is the first of the articles that 2 CFR part 1128 covers. Appendix A to 2 CFR part 1128 provides the standard wording of general terms and conditions for FMS Article I. The associated subpart of 2 CFR part 1128, subpart A, provides the prescription for DoD Components’ use of the standard wording of that article.

(2) Appendices B through G of 2 CFR part 1128 provide the standard wording of general terms and conditions for FMS Articles II through VII, respectively. The associated subparts, subparts B through G, provide the corresponding prescriptions for DoD Components.

#### PART 1128—RECIPIENT FINANCIAL AND PROGRAM MANAGEMENT: GENERAL AWARD TERMS AND CONDITIONS

Sec.

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- Appendix G to Part 1128—Terms and conditions for FMS Article VII, “Program income”

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

**§ 1128.1 Purpose of this part.**

(a) This part specifies standard wording of general terms and conditions concerning financial and program management, including recipients’ financial management systems,

payments, cost sharing or matching, program income, budget and program revisions, audits, allowable costs, and periods of availability of funds.

(b) It thereby implements OMB guidance in the following portions of 2 CFR part 200, as they apply to general terms and conditions:

- (1) Sections 200.80, 200.209, and 200.302 through 200.309;
- (2) Sections 200.301 and 200.328, as they relate to associations between financial data and performance accomplishments and reporting under awards; and
- (3) Subparts E and F.

**§ 1128.2 Applicability of this part.**

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

**§ 1128.3 Exceptions from requirements of this part.**

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

**§ 1128.4 Organization of this part.**

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through G to this part (with the associated direction to DoD Components in subparts A through G, respectively):

In . . .	You will find terms and conditions specifying recipients’ rights and responsibilities related to . . .	That would appear in an award with-in FMS article . . .
Appendix A	Financial management system standards	I.
Appendix B	Payments	II.
Appendix C	Allowable costs, period of availability of funds, and fee or profit	III.
Appendix D	Revision of budget and program plans	IV.
Appendix E	Non-Federal audits	V.
Appendix F	Cost sharing or matching	VI.
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**Subpart A—Financial management system standards (FMS Article I)**

**§ 1128.100 Purpose of FMS Article I.**

FMS Article I specifies standards for recipients’ financial management systems. It thereby implements OMB guidance in:

- (a) 2 CFR 200.302, 200.303, and 200.328; and
- (b) 2 CFR 200.301 and 200.328, as they relate to associations between financial data and performance accomplishments and reporting under awards.

**§ 1128.105 Content of FMS Article I.**

(a) *Requirement.* A DoD Component’s general terms and conditions must address requirements for recipients’ financial management systems.

(b) *Award terms and conditions*—(1) *General.* Except as provided in paragraph (b)(2) of this section, a DoD Component’s general terms and conditions must include the wording

appendix A to this part provides for FMS Article I.

(2) *Exceptions.* A DoD Component’s general terms and conditions may:

(i) Reserve Section A of FMS Article I if the DoD Component determines that it is not possible that any States will receive:

- (A) DoD Component awards using those general terms and conditions; or
- (B) Subawards from recipients of DoD Component awards using those general terms and conditions.

(ii) Reserve paragraph B.6 of FMS Article I if the DoD Component determines that it will not require recipients of awards using those general terms and conditions to relate financial data to performance accomplishments (e.g., through unit costs). Because the nature of research makes the use of unit costs and other relationships between financial data and performance accomplishments generally inappropriate, DoD Components should reserve paragraph B.6 in general terms

and conditions for awards supporting research.

**Subpart B—Payments (FMS Article II)**

**§ 1128.200 Purpose of FMS Article II.**

FMS Article II contains requirements related to payments under an award. It thereby implements OMB guidance in 2 CFR 200.305.

**§ 1128.205 Content of FMS Article II.**

(a) *Requirement.* A DoD Component’s general terms and conditions must address payment method; payment timing and amounts, which relate to cash management; frequency of payment requests; and matters related to recipients’ depositories, including interest earned on advance payments.

(b) *Award terms and conditions.* A DoD Component’s general terms and conditions must include the wording appendix B to this part provides for FMS Article II with appropriate additions, deletions, and substitutions as described in §§ 1128.210 through 1128.220.

**§ 1128.210 Payment requirements for States.**

(a) *Policy.* Payments to States are subject to requirements in Department of the Treasury regulations at 31 CFR part 205 that implement the Cash Management Improvement Act. Those regulations are in two subparts with distinct requirements that apply to different programs:

(1) Subpart A of 31 CFR part 205 contains requirements for payments to States under “major programs,” as defined in that part. The Department of the Treasury negotiates Treasury-State agreements for major programs. Those agreements specify the appropriate timing and amounts of payments. They further specify a State’s interest liability if it receives an advance payment too many days before it disburses the funds for program purposes, as well as the Federal Government’s interest liability if it reimburses the State too many days after the State disburses the funds. Most DoD awards to States are not under major programs, so subpart A applies relatively infrequently.

(2) Subpart B of 31 CFR part 205 applies to all other DoD grant and cooperative agreement awards to States—*i.e.*, awards that are not under major programs.

(b) *Default wording.* Because few DoD awards to States are under major programs, appendix B to this part includes default wording for Section A of FMS Article II that specifies the requirements of subpart B of 31 CFR part 205. A DoD Component’s general terms and conditions must include this wording for Section A of FMS Article II if no award using those terms and conditions will be made to a State under a program designated as a major program in the applicable Treasury-State agreement.

(c) *Exception for awards under major programs.* If a DoD Component is establishing general terms and conditions that will be used for awards to States, only some of which are subject to requirements for major programs in subpart A of 31 CFR part 205, then the DoD Component should:

(1) Use appendix B’s default wording for Section A of FMS Article II in its general terms and conditions; and

(2) In each award subject to subpart A of 31 CFR part 205, include award-specific terms and conditions that make payments to the recipient subject to the requirements in subpart A of 31 CFR part 205 and the applicable Treasury-State agreement, thereby overriding the wording of Section A of FMS Article II.

**§ 1128.215 Payment requirements for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.**

(a) *Policy.* OMB guidance in 2 CFR 200.305 addresses the use of three payment methods for awards—advance payments, reimbursement, and working capital advances. Two of the methods pertain to a DoD Component’s general terms and conditions, as described in paragraphs (a)(1) and (2) of this section.

(1) *Advance payments.* With the possible exception of construction awards, as provided in paragraph (a)(2) of this section, a DoD Component’s general terms and conditions must authorize each recipient to request payments in advance as long as the recipient maintains or demonstrates the willingness to maintain both:

(i) Written procedures that minimize the time elapsing between its receipt of funds from the Federal Government and its disbursement of the funds for program or project purposes; and

(ii) Financial management systems that meet the standards for fund control and accountability specified in the wording of FMS Article I (see subpart A and appendix A to this part).

(2) *Reimbursement.* A DoD Component’s general terms and conditions may specify the reimbursement method if the awards using those terms and conditions will support construction projects financed in whole or in part by the Federal Government.

(b) *Default award terms and conditions.* Appendix B provides default wording for Section B of FMS Article II that a DoD Component:

(1) Must use in general terms and conditions for non-construction awards to authorize recipients to request advance payments; and

(2) May use in general terms and conditions for construction awards if it elects to authorize recipients of those awards to request advance payments.

(c) *Alternative award terms and conditions.* A DoD Component may develop an alternative to appendix B’s default wording for Section B of FMS Article II to use in general terms and conditions for construction awards, if it elects to specify reimbursement as the payment method for those awards. The alternative:

(1) Would replace Appendix B’s default wording for paragraph B.1 with wording to specify the reimbursement method of payment;

(2) Must include appendix B’s default wording for paragraphs B.2.b and c, B.4, and B.5, which may be renumbered as appropriate, because those paragraphs

apply to reimbursements as well as advance payments;

(3) Should omit appendix B’s default wording for paragraphs B.2.a, B.3, and B.6 because those paragraphs apply specifically to advance payments; and

(4) Must inform recipients that the DoD payment office generally makes payment within 30 calendar days after receipt of the request for reimbursement by the award administration office, unless the request is reasonably believed to be improper.

**§ 1128.220 Electronic funds transfer and other payment procedural instructions or information.**

(a) *Policy.* A DoD Component’s general terms and conditions must specify that payments will be made by electronic funds transfer (EFT) unless a recipient is excepted in accordance with Department of the Treasury regulations at 31 CFR part 208 from the Governmentwide requirement to use EFT.

(b) *Award terms and conditions—(1) Electronic funds transfer.* Appendix B provides default wording for Section C of FMS Article II that a DoD Component must use to specify payment by EFT, when awards are not excepted from the Governmentwide requirement.

(2) *Other payment procedures or instructions.* A DoD Component may insert one or more paragraphs in its general terms and conditions in lieu of the reserved paragraph C.2 in appendix B, to provide procedural instructions or information regarding payments that is common to awards using those terms and conditions. For example, it may insert wording to give detailed instructions on where and how recipients are to submit payment requests. All forms, formats, and data elements for payment requests must be OMB-approved information collections.

**Subpart C—Allowable costs, period of availability of funds, and fee or profit (FMS Article III)****§ 1128.300 Purpose of FMS Article III.**

FMS Article III of the general terms and conditions specifies what costs are allowable as charges to awards and when they are allowable. It also specifies restrictions on payment of fee or profit. It thereby implements OMB guidance in §§ 200.209 and 200.309 and subpart E of 2 CFR part 200. It also partially implements 2 CFR 200.201(b)(1) and 200.323(c), as those sections apply to the cost principles to be used in relation to subawards and contracts, respectively.

**§ 1128.305 Content of FMS Article III.**

(a) *Requirement.* A DoD Component's general terms and conditions must address allowability of costs and permissibility of fee or profit.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix C to this part provides for FMS Article III with appropriate additions, deletions, and substitutions as described in §§ 1128.310 through 1128.325.

**§ 1128.310 Cost principles.**

(a) *Policy.* The set of Governmentwide cost principles applicable to a particular entity type governs the allowability of costs that may be:

(1) Charged to each cost-type:

(i) DoD grant or cooperative agreement to a recipient of that entity type;

(ii) Subaward to a subrecipient of that entity type at any tier below a DoD grant or cooperative agreement; and

(iii) Procurement transaction with a contractor of that entity type awarded by a recipient of a DoD grant or cooperative agreement or a subrecipient that received a subaward at any tier below that grant or cooperative agreement.

(2) Considered in establishing the amount of any:

(i) Fixed-amount subaward, at any tier under an award, to a subrecipient of that entity type; or

(ii) Fixed-price procurement transaction with a contractor of that entity type that is awarded by either a recipient of a DoD award or a subrecipient that received a subaward at any tier below that grant or cooperative agreement.

(b) *Default wording.* Because almost all DoD grants and cooperative agreements are cost-type awards, appendix C includes default wording for Section A of FMS Article III that specifies use of the applicable Governmentwide cost principles in the determination of the allowability of costs.

(c) *Alternative award terms and conditions.* A DoD Component may reserve any paragraph of appendix C's default wording for Section A of FMS Article III in its general terms and conditions if the Component is certain that no entities of the type to which the paragraph applies could be recipients of awards using those general terms and conditions or recipients of subawards or procurement transactions at any tier under those awards.

**§ 1128.315 Clarification concerning allowability of publication costs.**

(a) *Requirement.* A DoD Component's general terms and conditions must clarify that a recipient must charge publication costs consistently as either direct or indirect costs in order for those costs to be allowable charges to DoD grants and cooperative agreements.

(b) *Award terms and conditions—(1) General.* To clarify the allowability of publication costs, a DoD Component's general terms and conditions must include the wording appendix C to this part provides for Section B of FMS Article III.

(2) *Exception.* A DoD Component may instead reserve Section B of FMS Article III in its general terms and conditions if the DoD Component determines that there will be no publication costs under any of the awards using those general terms and conditions.

**§ 1128.320 Period of availability of funds.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify the period during which Federal funds are available for obligation by recipients for project or program purposes.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include the wording appendix C to this part provides for Section C of FMS Article III to specify the period of availability of funds.

**§ 1128.325 Fee or profit.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify that recipients may neither receive fee or profit nor pay fee or profit to subrecipients.

(b) *Award terms and conditions.* A DoD Component must use the wording appendix C to this part provides for Section D of FMS Article III to specify the limitation on payment of fee or profit.

**Subpart D—Revision of Budget and Program Plans (FMS Article IV)****§ 1128.400 Purpose of FMS Article IV.**

FMS Article IV of the general terms and conditions specifies requirements related to changes in recipients' budget and program plans. It thereby implements OMB guidance in § 200.308 of 2 CFR part 200 and partially implements § 200.209 and subpart E of that part.

**§ 1128.405 Content of FMS Article IV.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify the changes in budget and program plans for which a recipient is required to request DoD Component

prior approval and the procedures for submitting those requests.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must include as FMS Article IV the default wording appendix D to this part provides, with any revisions to the wording that are authorized by §§ 1128.410 through 1128.430.

**§ 1128.410 Approved budget.**

(a) *OMB guidance.* As described in 2 CFR 200.308(a), the approved budget for a grant or cooperative agreement may include both the Federal and non-Federal shares of funding under the award or only the Federal share.

(b) *DoD implementation.* For DoD grants and cooperative agreements, the approved budget includes the Federal share and any cost sharing or matching that the recipient is required to provide under the award.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must include the default wording appendix D to this part provides for Section A of FMS Article IV.

**§ 1128.415 Prior approvals for non-construction activities.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.308(c) through (e) addresses prior approval requirements for revisions of a recipient's budget and program plans under a non-construction award, which includes for the purposes of this section non-construction activities under an award that supports both construction and non-construction.

(b) *DoD implementation of the guidance.* The following paragraphs (c) through (g) of this section provide details of the DoD implementation of the guidance in 2 CFR 200.308(c) through (e) and paragraph (h) specifies the corresponding award terms and conditions. A DoD Component's general terms and conditions for non-construction awards may only require additional prior approvals for budget and program revisions (*i.e.*, prior approvals other than those authorized by this subpart) in accordance with the exceptions provisions of 2 CFR 1126.3.

(c) *Scope or objective, cost sharing or matching, and additional Federal funds.* A DoD Component's general terms and conditions for non-construction awards must require that a recipient obtain DoD Component prior approval:

(1) For a change in scope or objective of the project or program, as described in 2 CFR 200.308(c)(1)(i).

(2) For any change in the cost sharing or matching included in the approved budget for which FMS Article VI requires prior approval, as described in

OMB guidance at 2 CFR 200.308(c)(1)(vii).

(3) If the need arises for additional Federal funds to complete the project or program, as described in 2 CFR 200.308(c)(1)(viii).

(d) *Personnel changes, disengagements, or reductions in time.* A DoD Component must include the following prior approval requirements in general terms and conditions of research awards and also may include them in general terms and conditions of other non-construction awards:

(1) A change in a key person, as described in 2 CFR 200.308(c)(1)(ii).

(2) A principal investigator's or project director's disengagement from, or reduction in time devoted to, the project, as described in 2 CFR 200.308(c)(1)(iii).

(e) *Costs requiring prior approval under the cost principles.* With respect to waivers of prior approvals required by the cost principles, as described in 2 CFR 200.308(c)(1)(iv):

(1) Any waiver of a cost principles requirement for prior approval by a recipient entity's cognizant agency for indirect costs is appropriately addressed in award-specific terms and conditions, rather than general terms and conditions, because the general terms and conditions must be appropriate for use in awards to multiple recipient entities.

(2) A DoD Component may waive requirements in the cost principles for recipients to request prior approval before charging certain costs as direct costs to awards. However, the DoD Component should carefully consider each prior approval requirement individually and decide:

(i) Which, if any, to waive; and

(ii) Whether to make the waiver of the prior approval requirement contingent on specified conditions (*e.g.*, a DoD Component might waive the prior approval required for direct charging of special purpose equipment purchases under an award, but elect to waive it only for equipment that is to be used primarily in carrying out the project or program supported by the award).

(f) *Transfers of funds and subawards.* A DoD Component's general terms and conditions for non-construction awards may include prior approval requirements for:

(1) Transfers of funds for participant support costs, as described in 2 CFR 200.308(c)(1)(v).

(2) Subawarding of work under an award, as described in 2 CFR 200.308(c)(1)(vi).

(3) Transfers of funds among direct cost categories, as described in 2 CFR 200.308(e), but the wording in the

general terms and conditions must make clear that the prior approval requirement applies only to awards using those terms and conditions if the Federal share of the total value is in excess of the simplified acquisition threshold. Note that, as a matter of DoD policy, requiring prior approvals for transfers among direct cost categories generally is not appropriate for grants and cooperative agreements that support research.

(g) *Pre-award costs, carry forward of unobligated balances, and no-cost extensions.* (1) A DoD Component's general terms and conditions may authorize recipients to incur project costs up to 90 calendar days prior to the beginning date of the period of performance, at their own risk, as described in 2 CFR 200.308(d)(1). OMB guidance in 2 CFR 200.308(d)(4) makes that authorization the default policy for research awards and a DoD Component should override the default and require recipients to obtain the DoD Component's prior approval for pre-award costs only in exceptional circumstances.

(2) If a DoD Component's general terms and conditions are used for awards that have multiple periods of performance, the DoD Component should authorize recipients to carry forward unobligated balances to subsequent periods of performance, as described in 2 CFR 200.308(d)(3), unless there are compelling reasons not to do so.

(3) A DoD Component's general terms and conditions may authorize recipients to initiate one-time extensions in the periods of performance of their awards by up to 12 months, subject to the conditions described in 2 CFR 200.308(d)(2), but only if the DoD Component judges that authorizing no-cost extensions for awards using the general terms and conditions will not cause the DoD Component to fail to comply with DoD funding policies (*e.g.*, the incremental program budgeting and execution policy for research funding) contained in Volume 2A of the DoD Financial Management Regulation, DoD 7000.14-R.

(h) *Award terms and conditions.* Appendix D to this part provides default wording for inclusion in a DoD Component's general terms and conditions in accordance with paragraphs (c) through (g) of this section. Specifically:

(1) In accordance with paragraph (c) of this section, a DoD Component's general terms and conditions for non-construction awards must include the default wording that appendix D provides for paragraphs B.1.a and B.1.i

of FMS Article IV and, if there will be cost sharing or matching required under any awards using the general terms and conditions, paragraph B.1.g.

(2) In accordance with paragraph (d) of this section, a DoD Component's general terms and conditions for research awards must include the default wording that appendix D provides for paragraphs B.1.b and B.1.c of FMS Article IV. A DoD Component also may include paragraphs B.1.b and B.1.c in general terms and conditions for other non-construction awards.

(3) In accordance with paragraph (e) of this section, a DoD Component's general terms and conditions for non-construction awards must include the default wording that Appendix D provides for paragraph B.1.d of FMS Article IV unless the DoD Component decides to waive any requirements in the applicable cost principles for recipients to obtain prior approval before including certain types of costs as direct charges to awards. If a DoD Component elects to waive any of those prior approval requirements, it must add wording to paragraph B.1.d to identify the specific types of costs for which recipients need not obtain DoD Component prior approval (thereby leaving in place the other prior approval requirements in the cost principles).

(4) In accordance with paragraphs (f) and (g) of this section, a DoD Component's general terms and conditions for non-construction awards may include the default wording that appendix D provides for paragraphs B.1.e, B.1.f, and B.1.h and Section C of FMS Article IV. A DoD Component may modify the default wording as appropriate to the awards using its general terms and conditions (*e.g.*, to limit the authorization for pre-award costs to a period less than 90 calendar days prior to the beginning date of the period of performance).

(5) If no awards using a DoD Component's general terms and conditions will support non-construction activities, the DoD Component may reserve section B.1 of the default wording that appendix D provides for FMS Article IV.

#### **§ 1128.420 Prior approvals for construction activities.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.308(g)(1) through (4) addresses prior approval requirements for revisions of a recipient's budget and program plans under a construction award or construction activities under an award that supports both construction and non-construction activities.



(b) *DoD implementation of the guidance.* DoD implements the guidance in 2 CFR 200.308(g)(1) through (4) through terms and conditions of awards for construction. A DoD Component's general terms and conditions for construction awards may only require additional prior approvals for budget and program revisions (*i.e.*, prior approvals other than those authorized by this subpart) only in accordance with the exceptions provisions of 2 CFR 1126.3.

(c) *Award terms and conditions.* In a DoD Component's general terms and conditions for construction awards or awards supporting construction activities, the DoD Component:

(1) Must include the default wording that appendix D to this part provides for paragraph B.2 of FMS Article IV.

(2) May reserve or remove the default wording appendix D to this part provides for paragraph B.1 and Section C of FMS Article IV unless some awards using the general terms and conditions will also support non-construction activities (if the DoD Component elects to remove Section C, it should redesignate Section D in the article as Section C).

**§ 1128.425 Additional prior approval for awards that support both non-construction and construction activities.**

(a) *OMB guidance.* Guidance on an additional prior approval requirement for awards that support both construction and non-construction activities is contained in 2 CFR 200.308(g)(5).

(b) *DoD implementation of the guidance.* DoD implements the guidance in 2 CFR 200.308(g)(5) through terms and conditions for awards that support both non-construction and construction activities.

(c) *Award terms and conditions.* If a DoD Component establishes general terms and conditions for awards that support both non-construction and construction activities, the DoD Component may add the prior approval requirement for funding or budget transfers between construction and non-construction activities that is described in OMB guidance in 2 CFR 200.308(g)(5). The default wording that appendix D to this part provides for Section B of FMS Article IV includes a reserved paragraph B.3 in which the DoD Component may add appropriate wording to include that prior approval requirement.

**§ 1128.430 Procedures for prior approvals.**

(a) *OMB guidance.* Guidance on procedures related to recipient requests

for prior approval is contained in 2 CFR 200.308(h) and (i).

(b) *DoD implementation of the guidance.* DoD implements the guidance in 2 CFR 200.308(h) and (i) for prior approval requests through award terms and conditions.

(c) *Award terms and conditions.* A DoD Component must:

(1) Include the default wording appendix D to this part provides for paragraph D.1 of FMS Article IV of its general terms and conditions.

(2) Insert appropriate wording in lieu of the reserved paragraph D.2 that appendix D to this part includes in FMS Article IV to specify:

(i) The format the recipient must use when it requests approval for budget revisions. As described in 2 CFR 200.308(h), the award term may allow the recipient to submit a letter of request but otherwise must specify that the recipient use the same format it used for budget information in its application or proposal.

(ii) Any other procedural instructions related to requests for prior approvals for budget or program revisions (*e.g.*, to whom requests must be submitted) that are common to the awards using the general terms and conditions. For procedural instructions that will vary from one award to another, it is appropriate to include wording that points to the award-specific terms and conditions as the source of the information.

**Subpart E—Non-Federal Audits (FMS Article V)**

**§ 1128.500 Purpose of FMS Article V.**

FMS Article V of the general terms and conditions specifies requirements related to audits required under the Single Audit Act, as amended (31 U.S.C., chapter 75). The article thereby implements OMB guidance in subpart F of 2 CFR part 200.

**§ 1128.505 Content of FMS Article V.**

(a) *Requirement.* A DoD Component's general terms and conditions must address audit requirements.

(b) *Award terms and conditions—(1) General.* A DoD Component's general terms and conditions must include the default wording appendix E to this part provides for FMS Article V.

(2) *Exception.* A DoD Component may reserve Section B of the default wording in appendix E if there will be no subawards to for-profit entities under any award using those terms and conditions.

**Subpart F—Cost sharing or Matching (FMS Article VI)**

**§ 1128.600 Purpose of FMS Article VI.**

FMS Article VI sets forth requirements concerning recipients' cost sharing or matching under awards. It thereby implements OMB guidance in:

(a) 2 CFR 200.306 and

200.308(c)(1)(vii); and

(b) 2 CFR 200.434, in conjunction with FMS Article III in appendix C to this part.

**§ 1128.605 Content of FMS Article VI.**

(a) *Requirement.* General terms and conditions for DoD grants and cooperative agreements under which there may be required cost sharing or matching must specify the criteria for determining allowability, methods for valuation, and requirements for documentation of cost sharing or matching.

(b) *Award terms and conditions—(1) General.* A DoD Component's general terms and conditions must include as FMS Article VI the default wording appendix F to this part provides, with any revisions to the wording that are authorized by §§ 1128.610 through 1128.635.

(2) *Exception.* A DoD Component may reserve FMS Article VI of its general terms and conditions if it determines that there will be no cost sharing or matching required under any of the awards using those terms and conditions.

**§ 1128.610 General requirement for cost sharing or matching.**

(a) *Requirement.* (1) FMS Article VI of the general terms and conditions must tell a recipient that:

(i) It may find the amount or percentage of cost sharing or matching required under its award in the award cover pages.

(ii) The cost sharing or matching amount or percentage identified in the award includes all required (but not voluntary uncommitted) contributions to the project or program by the recipient and its subrecipients, including any that involve third-party contributions or donations to the recipient and subrecipients.

(iii) It must obtain the DoD Component's prior approval for any change in the required amount or percentage of cost share or match.

(2) At a DoD Component's option, FMS Article VI also may require a recipient to obtain the DoD Component's prior approval if it wishes to substitute alternative cost sharing or matching contributions in lieu of specific contributions included in the

approved budget (e.g., to use a third-party in-kind contribution not included in the approved budget).

(b) *Award terms and conditions.* To implement paragraph (a) of this section, a DoD Component's general terms and conditions must include the default wording Section I of Appendix F to this part provides as Section A of FMS Article VI. A DoD Component may insert wording in lieu of the reserved paragraph A.2.b if it elects to require recipients to obtain prior approval before substituting alternative cost sharing or matching contributions, as described in paragraph (a)(2) of this section.

**§ 1128.615 General criteria for determining allowability as cost sharing or matching.**

(a) *OMB guidance.* The OMB guidance in 2 CFR 200.306(b) lists the basic criteria for the allowability of cost sharing or matching under Federal awards.

(b) *Award terms and conditions—(1) General.* A DoD Component's general terms and conditions must include the default wording Section II of appendix F to this part provides as Section B of FMS Article VI to specify the allowability of cash or third-party in-kind contributions as cost sharing or matching.

(2) *Exception.* A DoD Component may reserve paragraph B.4 of Section B of FMS Article VI in its general terms and conditions, or replace it with appropriate alternative wording, if the DoD Component has statutory authority to accept costs reimbursed by other Federal awards as cost sharing or matching under the awards using its general terms and conditions.

**§ 1128.620 Allowability of unrecovered indirect costs as cost sharing or matching.**

(a) *OMB guidance.* The OMB guidance in 2 CFR 200.306(c) provides that unrecovered indirect costs may only be included as part of cost sharing and matching with the prior approval of the Federal awarding agency.

(b) *DoD implementation.* DoD Components must allow any recipient that either has an approved negotiated indirect cost rate or is using the de minimis rate described in 2 CFR 200.414(f) to count unrecovered indirect costs toward any required cost sharing or matching under awards. The basis for this policy is that recipients' indirect costs that are allowable and allocable to DoD projects and programs are legitimate costs of carrying out those projects and programs.

(c) *Award terms and conditions.* To implement the policy in paragraph (b) of this section, a DoD Component's general

terms and conditions must include the default wording Section III of appendix F to this part provides as Section C of FMS Article VI unless a statute requires otherwise.

**§ 1128.625 Allowability of program income as cost sharing or matching.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.307(e)(3) specifies that, with the prior approval of the Federal awarding agency, recipients may use program income to meet cost sharing or matching requirements of their awards.

(b) *Award terms and conditions—(1) General.* A DoD Component's general terms and conditions must include the default wording Section IV of appendix F to this part provides as Section D of FMS Article VI if, in FMS Article VII of those terms and conditions, the DoD Component specifies that recipients dispose of program income using either:

(i) The cost sharing or matching alternative described in paragraph (b)(1)(iii) of § 1128.720; or

(ii) A combination alternative, as described in paragraph (b)(1)(iv) of § 1128.720, that includes use of at least some program income as cost sharing or matching.

(2) *Exception.* A DoD Component may reserve Section D of FMS Article VI if FMS Article VII of those terms and conditions does not provide that recipients will use any program income as cost sharing or matching.

**§ 1128.630 Valuation of services or property contributed or donated by recipients or subrecipients.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.306(d) specifies:

(1) That values for recipients' and subrecipients' contributions of services or property toward cost sharing or matching must be established in accordance with the cost principles in subpart E of 2 CFR part 200; and

(2) Types of projects or programs under which recipients' or subrecipients' donations of buildings or land are allowable as cost sharing or matching, with the prior approval of the Federal awarding agency, and how the donations are to be valued in those cases.

(b) *DoD implementation.* DoD implements the guidance in 2 CFR 200.306(d) through award terms and conditions, with the following clarifications:

(1) *Cost principles to be used for valuation.* (i) Values for recipients' and subrecipients' contributions of services or property toward cost sharing or matching must be established in accordance with the cost principles applicable to the entity making the

contribution. Note that the applicable cost principles are in subpart E of 2 CFR part 200 only if the entity making the contribution is an institution of higher education, nonprofit organization, State, local government, or Indian tribe.

(ii) Consistent with the cost principles, what generally should be charged to awards for real property and equipment is depreciation rather than allowing a recipient's or subrecipient's donation of the property (i.e., counting the full value of the property toward cost sharing or matching). Note, however, that depreciation included in a recipient's or subrecipient's indirect costs is not appropriate for counting as cost sharing or matching under an individual award.

(2) *Donations of property to projects or programs under awards.* (i) In addition to donations of buildings or land described in 2 CFR 200.306(d), recipients and subrecipients may, with the prior approval of the DoD Component, donate other capital assets described in the cost principles in 2 CFR 200.439(b)(1) through (3). The basis for clarifying that recipients may donate other capital assets to projects or programs under awards is that, with the DoD Component's approval:

(A) Capital expenditures to acquire those types of capital assets are allowable as direct charges to awards; and

(B) The costs therefore satisfy the allowability criterion in 2 CFR 200.306(b)(4) and can qualify as cost sharing or matching if they meet the other criteria listed in 2 CFR 200.306(b).

(ii) However, when there are alternative ways for recipients to meet requirements for cost sharing or matching, DoD Components should not approve donations of capital assets to projects or programs under awards. Inclusion of the full value of a donated asset as project costs in the approved budget of an award is analogous to inclusion of the acquisition cost for an asset that is purchased under the award. Through the donation, the Government acquires an interest in the donated asset that must be resolved at time of disposition of the asset, which is best avoided if possible.

(iii) Whenever a DoD Component permits a recipient to donate a capital asset to a project or program under an award, it should inform the cognizant Federal agency that negotiates the indirect cost rate for that recipient. Doing so enables the cognizant agency to take the donation into account when it establishes the recipient's indirect cost rate, given that the recipient may not include depreciation for the donated

asset as indirect costs that enter into the computation of the rate.

(c) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must use the default wording Section V of appendix F to this part provides as Section E of FMS Article VI.

(2) *Exception.* A DoD Component's general terms and conditions may reserve paragraph E.2 of the default wording appendix F to this part provides if the DoD Component does not allow recipients to donate buildings, land, or other capital assets to projects or programs under awards using those terms and conditions.

#### § 1128.635 Valuation of third-party in-kind contributions.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.306(e) through (j) and 2 CFR 200.434(b) through (g) specifies how to value and document various types of third-party in-kind contributions or donations for cost sharing or matching purposes.

(b) *Award terms and conditions*—(1) *General.* To implement the OMB guidance described in paragraph (a) of this section as it applies to valuation and documentation of third-party in-kind contributions and donations, a DoD Component's general terms and conditions must use the default wording Section VI of appendix F to this part provides as Section F of FMS Article VI.

(2) *Exception.* A DoD Component's general terms and conditions may reserve any paragraph of the default wording Section VI of appendix F to this part provides for Section F of FMS Article VI if the DoD Component determines that there will be no third-party in-kind contributions of the type the paragraph addresses under awards using those terms and conditions.

#### Subpart G—Program Income (FMS Article VII)

##### § 1128.700 Purpose of FMS Article VII.

FMS Article VII of the general terms and conditions specifies requirements for program income that recipients earn. The article thereby implements OMB guidance in 2 CFR 200.80 and 200.307.

##### § 1128.705 Content of FMS Article VII.

(a) *Requirement.* General terms and conditions for DoD grants and cooperative agreements must address the kinds of income included as program income, the way or ways in which a recipient may use it, the duration of the recipient's accountability for it, and related matters.

(b) *Award terms and conditions.* A DoD Component's general terms and

conditions must include as FMS Article VII the default wording appendix G to this part provides, with any revisions to the wording of Sections A, D, and E of the article that are authorized by §§ 1128.710 through 1128.725.

##### § 1128.710 What program income includes.

(a) *OMB guidance.* Under the definition of "program income" at 2 CFR 200.80, and related OMB guidance at 2 CFR 200.307, an agency's regulations or award terms and conditions may include as program income:

(1) Rebates, credits, discounts, and interest earned on any of them; and

(2) Taxes, special assessments, levies, fines and other similar revenue raised by a governmental recipient.

(b) *DoD implementation.* Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, each DoD Component must exclude the types of income listed in paragraphs (a)(1) and (2) of this section from program income for which recipients are accountable to the Federal Government.

(c) *Award terms and conditions*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a DoD Component must use the default wording provided in Section I of appendix G to this part as Section A of FMS Article VII in its general terms and conditions. Doing so excludes the types of income listed in paragraphs (a)(1) and (2) of this section from program income for which recipients are accountable to the Federal Government.

(2) *Exceptions.* If a DoD Component has a statutory or regulatory basis for including one or both of the types of income described in paragraphs (a)(1) and (2) of this section, it may do so by appropriately revising the default wording appendix G provides for Section A of FMS Article VII. For example, to include as program income:

(i) Rebates, credits, discounts, and interest earned on them, a DoD Component would reserve paragraph A.3.c and insert the wording of that paragraph as a new paragraph at the end of section A.2, thereby adding them to the list of items included as program income subject to FMS Article VII.

(ii) Taxes, special assessments, levies, fines and other similar revenue raised by a governmental recipient, a DoD Component would reserve paragraph A.3.d and insert that wording as a new paragraph at the end of section A.2, thereby adding them to the list of items included as program income subject to FMS Article VII.

##### § 1128.715 Recipient obligations for license fees and royalties.

(a) *Policy.* Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment provides otherwise, a DoD Component's general terms and conditions may not specify that recipients have obligations to the Federal Government with respect to program income from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions produced under DoD awards.

(b) *Award terms and conditions*—(1) *General.* Except as provided in paragraph (b)(2) of this section, a DoD Component's general terms and conditions must implement the policy in paragraph (a) of this section by including the default wording provided in Section III of appendix G to this part as Section D of FMS Article VII.

(2) *Exception.* If a DoD Component has a statutory or regulatory basis for establishing recipient obligations for the license fees and royalties described in paragraph (a) of this section, it may reserve Section D of FMS Article VII in its general terms and conditions.

##### § 1128.720 Program income use.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.307(e) identifies alternative ways that a Federal agency might specify that recipients use program income they earn.

(b) *DoD implementation.* A DoD Component's general terms and conditions must specify how recipients are to use program income under awards using those terms and conditions.

(1) The terms and conditions may specify one of the following ways for recipients to use program income:

(i) *Addition.* A recipient under this alternative adds program income to the total amount of the approved budget, which consists of the Federal share of funding and any required matching or cost sharing.

(ii) *Deduction.* A recipient using this alternative subtracts program income from total allowable costs to determine net allowable costs for purposes of determining the Federal share of funding and any required cost sharing or matching.

(iii) *Cost sharing or matching.* A recipient under this alternative counts program income toward its required cost sharing or matching.

(iv) *Combination.* The fourth alternative is a combination of the three described in paragraphs (b)(1)(i) through (iii) of this section. For example, an agency might specify one alternative to be used for program income up to a

dollar limit and a second alternative for any program income beyond that amount.

(2) For research awards, absent compelling reasons to do otherwise for a specific set of general terms and conditions, a DoD Component must specify the addition alternative described in paragraph (b)(1)(i) of this section.

(3) For general terms and conditions of other awards, a Component may specify any of the alternatives described in paragraph (a) of this section. However, note that the cost sharing or matching alternative is best used as part of a combination alternative, as described in paragraph (b)(1)(iv) of this section, unless the DoD Component knows at the time awards are made how much program income recipients will earn in relation to the amounts of their required cost sharing or matching.

(c) *Award terms and conditions.* (1) *Default—addition alternative.* In accordance with the DoD implementation in paragraph (b) of this section, a DoD Component must use the default wording provided in Section IV of appendix G to this part as Section E of FMS Article VII in:

(i) Research awards; and  
(ii) Other awards for which it elects to specify the addition alternative for use of program income.

(2) *Deduction alternative.* A DoD Component electing to specify the deduction alternative for use of program income should modify the default wording appendix G to this part provides for Section E by:

(i) Substituting the following wording for the default wording of paragraph E.1: “1. You must use any program income that you earn during the period of performance under this award as a deduction from the total approved budget of this award. The program income must be used for the purposes and in accordance with the terms and conditions of the award.”

(ii) Including an additional paragraph E.4 such as the following to inform recipients how the award will change if program income is deducted: “If you report program income on the SF-425, we will recalculate the Federal share of the budget and the non-Federal share if there is one. We also will modify the award to reflect the recalculated share or shares and the amount of program income you must spend on the project, which is the difference between the originally approved and recalculated budget amounts.”

(3) *Cost-sharing or matching alternative.* A DoD Component electing to specify the cost-sharing or matching alternative for use of program income

should replace the default wording appendix G to this part provides for Section E with the following wording: “You must use any program income that you earn during the period of performance under this award to meet any cost-sharing or matching requirement under this award. The program income must be used for the purposes and in accordance with the terms and conditions of the award.”

(4) *A combination of alternatives.* A DoD Component electing to specify some combination of addition, deduction, and cost-sharing or matching alternatives must use wording in Section E of FMS Article VII that specifies requirements for each alternative in the combination that is consistent with the requirements specified for that alternative in paragraphs (c)(1), (2), or (3) of this section.

#### **§ 1128.725 Program income after the period of performance.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.307(f) provides that an agency may specify in agency regulations, award terms and conditions, or agreements negotiated with recipients during the closeout process that a recipient is accountable to the Federal Government for program income earned after the end of the period of performance.

(b) *DoD implementation.* A DoD Component should rarely, if ever, establish a requirement for a recipient to be accountable to the Federal Government for program income earned after the end of the period of performance.

(c) *Award terms and conditions.* A DoD Component’s general terms and conditions must include as Section F of FMS Article VII the default wording for that section that is provided in Section V of appendix G to this part. That wording specifies that recipients are not accountable to the Federal Government for program income earned after the end of the performance period. If an exception is warranted for an individual award, the exception is properly addressed at the time of award in the award-specific terms and conditions.

#### **Appendix A to Part 1128—Terms and Conditions for FMS Article I, “Financial Management System Standards”**

DoD Components must use the following standard wording in FMS Article I in accordance with § 1128.105 of this part:

FMS Article I. Financial management system standards. (December 2014)

Section A. System standard for States. As a State, you must expend and account for funds under this award in accordance with:

1. Applicable State laws; and
2. To the extent they comply with the requirements of Section B of this Article, your procedures for expending and accounting for your own State funds.

Section B. System standards for all recipients. Your financial management system must provide for:

1. Inclusion, in your accounts, of the following information about each DoD grant or cooperative agreement that you receive:
  - a. That you received the award from the Department of Defense;
  - b. The number and title listed in the Catalog of Federal Domestic Assistance for the DoD program under which the award was made;
  - c. The DoD award number;
  - d. The year (your fiscal year) in which you received the award;
2. Accurate, current, and complete disclosure of the financial results of the award needed to comply with financial and programmatic reporting requirements that are specified in REP Articles I and II of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements. If you are asked at any time under this award to report financial information on an accrual basis, you:

- a. Need not establish an accrual accounting system if you maintain your records on a different basis; and
- b. May develop the accrual data based on an analysis of the data you have on hand.
3. Records that identify adequately the sources of funds for all activities funded by DoD awards, including any required cost sharing or matching, and the application of those funds. This includes funding authorizations; your obligations and expenditures of the funds; unobligated balances; property and other assets under the award; program income; and interest.
4. Effective control over, and accountability for, all funds, property, and other assets under this award. You must adequately safeguard all assets and assure they are used solely for authorized purposes (see Section C of this article for additional requirements concerning internal controls).
5. Comparison of expenditures under this award for project or program purposes with amounts in the approved budget for those purposes.
6. The ability to relate financial data to performance accomplishments under this award if you are required to do so by the programmatic reporting requirements in REP Article I of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements.
7. Written procedures:

- a. To implement requirements specified in FMS Article II, “Payments;”
- b. For determining the allowability of costs, which for this award are determined in accordance with FMS Article III, “Allowable costs, period of availability of funds, and fee or profit,” of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award that relate to allowability of costs.

Section C. Internal controls. Your system of internal controls must conform to OMB

1. Applicable State laws; and
2. To the extent they comply with the requirements of Section B of this Article, your procedures for expending and accounting for your own State funds.

Section B. System standards for all recipients. Your financial management system must provide for:

1. Inclusion, in your accounts, of the following information about each DoD grant or cooperative agreement that you receive:

guidance in 2 CFR 200.303. With respect to paragraph (e) of 2 CFR 200.303, your internal control system must include measures to safeguard any information that Federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export controlled information), whether generated under the award or provided to you and identified as being subject to protection.

### Appendix B to Part 1128—Terms and Conditions for FMS Article II, “Payments”

DoD Components must use the following default wording in FMS Article II in accordance with §§ 1128.205 through 1128.220 of this part, which permit substitution or addition of wording, or both, when appropriate:

FMS Article II. Payments. (December 2014)

Section A. Awards to States. If the award-specific terms and conditions of this award do not identify it as an award subject to subpart A of 31 CFR part 205 (Department of the Treasury regulations implementing the Cash Management Improvement Act), then this award is subject to subpart B of that part. Consistent with subpart B of 31 CFR part 205:

1. Payment method, timing, and amounts.

You must:

a. Minimize the time between your receipt of a payment under this award and your disbursement of those funds for program purposes.

b. Limit the amount of each advance payment request to the minimum amount you need to meet your actual, immediate cash requirements for carrying out the program or project.

c. Submit each advance payment request approximately 10 days before you anticipate disbursing the requested amount for program purposes, so that your receipt of the funds will be as close in time as is administratively feasible to your actual cash outlay for direct program or project costs and the proportionate share of any allowable indirect costs.

2. Interest. Unlike awards subject to subpart A of 31 CFR part 205, neither you nor we will incur any interest liability due to a difference in timing between your receipt of payments under this award and your disbursement of those funds for program purposes.

Section B. Awards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

1. Payment method. Unless the award-specific terms and conditions of this award provide otherwise, you are authorized to request advance payments under this award. That authorization is contingent on your continuing to maintain, or demonstrating the willingness to maintain, written procedures that minimize the time elapsing between your receipt of each payment and your disbursement of the funds for program purposes. Note that you are not required to request advance payments and may instead, at your option, request reimbursements of funds after you disburse them for program purposes.

2. Amounts requested. You must:

a. Limit the amount of any advance payment request to the minimum amount needed to meet your actual, immediate cash requirements for carrying out the purpose of the approved program or project, including direct program or project costs and a proportionate share of any allowable indirect costs.

b. Exclude from any payment request amounts you are withholding from payments to contractors to assure satisfactory completion of the work. You may request those amounts when you make the payments to the contractors or to escrow accounts established to assure satisfactory completion of the work.

c. Exclude from any payment request amounts from any of the following sources that are available to you for program purposes under this award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for program purposes before requesting additional funds from us.

3. Timing of requests. For any advance payment you request, you should submit the request approximately 10 days before you anticipate disbursing the requested amount for program purposes. With time for agency processing of the request, that should result in payment as close as is administratively feasible to your actual disbursements for program or project purposes.

4. Frequency of requests. You may request payments as often as you wish unless you have been granted a waiver from requirements to receive payments by electronic funds transfer (EFT). If you have been granted a waiver from EFT requirements, the award-specific terms and conditions of this award specify the frequency with which you may submit payment requests.

5. Withholding of payments. We will withhold payments for allowable costs under the award at any time during the period of performance only if one or more of the following applies:

a. We suspend either payments or the award, or disallow otherwise allowable costs, as a remedy under OAR Article III due to your material failure to comply with Federal statutes, regulations, or the terms and conditions of this award. If we suspend payments and not the award, we will release withheld payments upon your subsequent compliance. If we suspend the award, then amounts of payments are subject to adjustment in accordance with the terms and conditions of OAR Article III.

b. You are delinquent in a debt to the United States as defined in OMB Circular A-129, “Policies for Federal Credit Programs and Non-Tax Receivables,” in which case we may, after reasonable notice, inform you that we will not make any further payments for costs you incurred after a specified date until you correct the conditions or liquidate the indebtedness to the Federal Government.

c. The award-specific terms and conditions include additional requirements that provide for withholding of payments based on conditions identified during our pre-award risk evaluation, in which case you should

have been notified about the nature of those conditions and the actions needed to remove the additional requirements.

6. Depository requirements.

a. There are no eligibility requirements for depositories you use for funds you receive under this award.

b. You are not required to deposit funds you receive under this award in a depository account separate from accounts in which you deposit other funds. However, FMS Article I requires that you be able to account for the receipt, obligation, and expenditure of all funds under this award.

c. You must deposit any advance payments of funds you receive under this award in insured accounts whenever possible and, unless any of the following apply, you must deposit them in interest-bearing accounts:

i. You receive a total of less than \$120,000 per year under Federal grants and cooperative agreements.

ii. You would not expect the best reasonably available interest-bearing account to earn interest in excess of \$500 per year on your cash balances of advance payments under Federal grants and cooperative agreements.

iii. The best reasonably available interest-bearing account would require you to maintain an average or minimum balance higher than it would be feasible for you to do within your expected Federal and non-Federal cash balances.

iv. A foreign government or banking system precludes your use of interest-bearing accounts.

d. You may retain for administrative expenses up to \$500 per year of interest that you earn in the aggregate on advance payments you receive under this award and other Federal grants and cooperative agreements. You must remit annually the rest of the interest to the Department of Health and Human Services, Payment Management System, using the procedures set forth in OMB guidance in 2 CFR 200.305(b)(9).

Section C. Electronic funds transfer and other payment procedural instructions or information.

1. Electronic funds transfer. Unless the award-specific terms and conditions of this award provide otherwise, you will receive payments under this award by electronic funds transfer.

2. [Reserved].

### Appendix C to Part 1128—Terms and Conditions for FMS Article III, “Allowable Costs, Period of Availability of Funds, and Fee or Profit”

DoD Components must use the following default wording in FMS Article III in accordance with sections 1128.305 through 1128.325 of this part, which permit substitution of alternative wording, addition of supplemental wording, or both, when appropriate:

FMS Article III. Allowable costs, period of availability of funds, and fee or profit. (December 2014)

Section A. Allowable costs. This section, with the clarification provided in Section B, specifies which Federal cost principles must be used in determining the allowability of costs charged to this award, a subrecipient’s

costs charged to any cost-type subaward that you make under this award, and a contractor's costs charged to any cost-type procurement transaction into which you enter under this award. These cost principles also govern the allowable costs that you or a subrecipient of a subaward at any tier below this award may consider when establishing the amount of any fixed-amount subaward or fixed-price procurement transaction at the next lower tier. The set of cost principles to be used in each case depends on the type of entity incurring the cost under the award, subaward, or contract.

1. General case. If you, your subrecipient, or your contractor is:

a. An institution of higher education, the allowability of costs must be determined in accordance with provisions of subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendix III to that part.

b. A hospital, the allowability of costs must be determined in accordance with provisions of appendix IX to 2 CFR part 200, which currently specifies the cost principles in appendix IX to 45 CFR part 75 as the applicable cost principles.

c. A nonprofit organization other than a hospital or institution of higher education, the allowability of costs must be determined in accordance with provisions of subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices IV and VIII to that part. In accordance with guidance in 2 CFR 200.401(c), a nonprofit organization listed in appendix VIII to 2 CFR part 200 is subject to the cost principles for for-profit entities specified in paragraph 1.e of this section.

d. A State, local government, or Indian tribe, the allowability of costs must be determined in accordance with applicable provisions of subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices V through VII to that part.

e. A for-profit entity (other than a hospital) or a nonprofit organization listed in Appendix VIII to 2 CFR part 200:

i. The allowability of costs must be determined in accordance with:

A. The cost principles for commercial organizations in the Federal Acquisition Regulation (FAR) at subpart 31.2 of 48 CFR part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement (DFARS) at subpart 231.2 of 48 CFR part 231; and

B. For a for-profit entity, the additional provisions on allowability of audit costs, in 32 CFR 34.16(f).

ii. The indirect cost rate to use in that determination is:

A. The for-profit entity's federally negotiated indirect cost rate if it has one.

B. Subject to negotiation between you and the for-profit entity if it does not have a federally negotiated indirect cost rate. The rate that you negotiate may provide for reimbursement only of costs that are allowable in accordance with the cost principles specified in paragraph A.1.e.i of this article.

2. Exception. You may use your own cost principles in determining the allowability of

a contractor's costs charged to a cost-type procurement transaction under this award—or in pricing for a fixed-price contract based on estimated costs—as long as your cost principles comply with the Federal cost principles that paragraph A.1 of this section identifies as applicable to the contractor.

Section B. Clarifications concerning charges for professional journal publications. For an entity that Section A of this article makes subject to the cost principles in subpart E of 2 CFR part 200:

1. Costs of publishing in professional journals are allowable under 2 CFR 200.461(b) only if they are consistently applied across the organization. An organization may not charge costs of journal publications as direct costs to this award if it charges any of the same type of costs for other journal publications as indirect costs.

2. "Costs of publication or sharing of research results" in 2 CFR 200.461(b)(3) are the "charges for professional journal publications" described in 2 CFR 200.461(b) and subject to the conditions of 2 CFR 200.461(b)(1) and (2).

Section C. Period of availability of funds. You may charge to this award only:

1. Allowable costs incurred during the period of performance specified in this award, including any subsequent amendments to it;

2. Any pre-award costs that you are authorized (by either the terms and conditions of FMS Article IV or the DoD awarding official) to incur prior to the start of the period of performance, at your own risk, for purposes of the program or project under this award; and

3. Costs of publishing in professional journals incurred after the period of performance, as permitted under 2 CFR 200.461(b)(3), if:

a. We receive the request for payment for such costs no later than the date on which REP Article II requires you to submit the final financial report to us (or, if we grant your request for an extension of the due date, that later date on which the report is due); and

b. Your reported expenditures on the final financial report include the amount you disbursed for those costs.

Section D. Fee or profit.

1. You may not receive any fee or profit under this award.

2. You may not use funds available to you under this award to pay fee or profit for an entity of any type to which you make a subaward.

3. You may pay fee or profit to an entity with which you enter into a procurement transaction to purchase goods or general support services for your use in carrying out the project or program under the award.

#### **Appendix D to Part 1128—Terms and Conditions for FMS Article IV, "Revision of Budget and Program Plans"**

I. *SECTION A OF FMS ARTICLE IV*. DoD Components must use as Section A of FMS Article IV the following default wording in accordance with § 1128.410 of this part:

FMS Article IV. Revision of budget and program plans. (December 2014)

Section A. Approved budget. The approved budget of this award:

1. Is the most recent version of the budget that you submitted and we approved (either at the time of the initial award or a more recent amendment), to summarize planned expenditures for the project or program.

2. Includes all Federal funding that we make available to you under this award to use for program or project purposes and any cost sharing or matching that you are required to provide under this award for those same purposes.

II. *SECTIONS B AND C OF FMS ARTICLE IV*. DoD Components must use the following default wording in Sections B and C of FMS Article IV in accordance with §§ 1128.415 through 1128.425 of this part, which permit reserving wording, substitution of alternative wording, and addition of supplemental wording, when appropriate:

Section B. Revisions requiring prior approval.

1. Non-construction activities. You must request prior approval from us for any of the following program or budget revisions in non-construction activities:

a. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

b. A change in a key person identified in the award cover pages.

c. The approved principal investigator's or project director's disengagement from the project for more than three months, or a 25 percent reduction in his or her time devoted to the project.

d. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

e. The transfer to other categories of expense of funds included in the approved budget for participant support costs, as defined at 2 CFR 200.75.

f. A subaward to another entity under which it will perform a portion of the substantive project or program under the award, if it was not included in the approved budget. This does not apply to your contracts for acquisition of supplies, equipment, or general support services you need to carry out the program.

g. Any change in the cost sharing or matching you provide under the award, as included in the approved budget, for which FMS Article VI requires prior approval.

h. A transfer of funds among direct cost categories or programs, functions, and activities, if the federal share of the total value for your award exceeds the simplified acquisition threshold and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the approved budget.

i. The need arises for additional Federal funds to complete the project or program.

2. Construction activities. You must request prior approval from us for any of the following program or budget revisions in construction activities:

a. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

b. The need arises for additional Federal funds to complete the project.

c. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

3. Funding transfers between construction and non-construction activities. [Reserved.]

Section C. Pre-award costs, carry forward of unobligated balances, and one-time no-cost extensions. You are authorized, without requesting prior approval from us, to:

1. Charge to this award after you receive it pre-award costs that you incurred, at your own risk, up to 90 calendar days before the start date of the period of performance, as long as they are costs that would be allowable charges to the project or program under the terms and conditions of FMS Article III if they were incurred during the period of performance.

2. Carry forward an unobligated balance to a subsequent period of performance under this award.

3. Initiate a one-time extension of the period of performance by up to 12 months, as long as:

a. You notify us in writing with the supporting reasons and revised end date of the period of performance at least 10 calendar days before the current end date.

b. The extension does not require any additional Federal funding.

c. The extension does not involve any change in the scope or objectives of the project or program.

III. *SECTION D OF FMS ARTICLE IV.* In accordance with § 1128.430 of this part, DoD Components must use the following default wording for paragraph D.1 of Section D of FMS Article IV and insert appropriate wording in lieu of the reserved paragraph D.2:

Section D. Procedures.

1. We will review each request you submit for prior approval for a budget or program change and, within 30 calendar days of our receipt of your request, we will respond to you in writing to either:

a. Notify you whether your request is approved; or

b. Inform you that we still are considering the request, in which case we will let you know when you may expect our decision.

2. [Reserved.]

#### **Appendix E to Part 1128—Terms and Conditions for FMS Article V, “Non-Federal Audits”**

DoD Components must use the following default wording in FMS Article V in accordance with section 1128.505 of this part:

FMS Article V. Non-Federal audits. (December 2014)

Section A. Requirements for entities subject to the Single Audit Act. You and each subrecipient under this award that is an institution of higher education, nonprofit organization, State, local government, or Indian tribe must comply with the audit requirements specified in subpart F of 2 CFR part 200, which is the OMB implementation of the Single Audit Act, as amended (31 U.S.C. chapter 75).

Section B. Requirements for for-profit entities. Any for-profit entity that receives a subaward from you under this award is subject to the audit requirements specified in 32 CFR 34.16. Your subaward terms and conditions will require the subrecipient to provide the reports to you if it is willing to do so, so that you can resolve audit findings that pertain specifically to your subaward (e.g., disallowance of costs). If the for-profit entity is unwilling to agree to provide the auditor's report to you, contact the grants officer for this award to discuss an alternative approach for carrying out audit oversight of the subaward. If the grants officer does not provide an alternative approach within 30 days of receiving your request, you may determine an approach to ensure the for-profit subrecipient's compliance with the subaward terms and conditions, as described in OMB guidance at 2 CFR 200.501(h).

#### **Appendix F to Part 1128—Terms and Conditions for FMS Article VI, “Cost Sharing or Matching”**

DoD Components that do not reserve FMS Article VI as permitted under § 1128.605 of this part must use the wording provided in this appendix in accordance with §§ 1128.610 through 1128.635.

I. *SECTION A OF FMS ARTICLE VI.* DoD Components must use as Section A of FMS Article VI the following wording in accordance with § 1128.610 of this part:

FMS Article VI. Cost sharing or matching. (December 2014)

Section A. Required cost sharing or matching.

1. If any cost sharing or matching is required under this award, the total amount or percentage required is shown in the award cover pages and included in the approved budget. That cost sharing or matching includes all:

a. Cash and third party in-kind contributions.

b. Contributions to the project or program made either by or through (if made by a third party) you and any subrecipients.

2. You must obtain our prior approval if you wish to:

a. Change the amount or percentage of cost sharing or matching required under this award.

b. [Reserved].

II. *SECTION B OF FMS ARTICLE VI.* DoD Components must use the following default wording in Section B of FMS Article VI in accordance with § 1128.615 of this part, which permits reserving paragraph B.4 under certain conditions:

Section B. Allowability as cost sharing or matching. Each cash or third party in-kind contribution toward any cost sharing or matching required under this award, whether put forward by you or a subrecipient under a subaward that you make, is allowable as cost sharing or matching if:

1. You (or the subrecipient, if it is a subrecipient contribution) maintain records from which one may verify that the contribution was made to the project or program and, if it is a third-party in-kind contribution, its value.

2. The contribution is not counted as cost sharing or matching for any other Federal award.

3. The contribution is:

a. Allowable under the cost principles applicable to you (or the subrecipient, if it is a subrecipient contribution) under FMS Article III of these terms and conditions; and

b. Allocable to the project or program and reasonable.

4. The Government does not pay for the contribution through another Federal award, unless that award is under a program that has a Federal statute authorizing application of that program's Federal funds to other Federal programs' cost sharing or matching requirements.

5. The value of the contribution is not reimbursed by the Federal share of this award as either a direct or indirect cost.

6. The contribution conforms to the other terms and conditions of this award, including the award-specific terms and conditions.

III. *SECTION C OF FMS ARTICLE VI.* DoD Components must use the following default wording in Section C of FMS Article VI in accordance with § 1128.620 of this part:

Section C. Allowability of unrecovered indirect costs as cost sharing or matching. You may use your own or a subrecipient's unrecovered indirect costs as cost sharing or matching under this award. Unrecovered indirect costs means the difference between the amount of indirect costs charged to the award and the amount that you and any subrecipients could have charged in accordance with your respective approved indirect cost rates, whether those rates are negotiated or de minimis (as described in 2 CFR 200.414(f)).

IV. *SECTION D OF FMS ARTICLE VI.* DoD Components must use the following default wording in Section D of FMS Article VI or reserve the section, in accordance with § 1128.625 of this part:

Section D. Allowability of program income as cost sharing or matching. If FMS Article VII of these general terms and conditions of this award specify that you are to use some or all of the program income you earn to meet cost-sharing or matching requirements under the award, then program income is allowable as cost sharing or matching to the extent specified in those award terms and conditions.

V. *SECTION E OF FMS ARTICLE VI.* DoD Components must use the following default wording in Section E of FMS Article VI in accordance with § 1128.630 of this part:

Section E. Valuation of services or property that you or subrecipients contribute or donate. You must establish values for services or property contributed or donated toward cost sharing or matching by you or subrecipients in accordance with the provisions of this section. These contributions or donations are distinct from third-party contributions or donations to you or subrecipients, which are addressed in Section F of this article.

1. Usual valuation of services or property that you or subrecipients contribute or donate. Values established for contributions of services or property by you or a subrecipient must be the amounts allowable

in accordance with the cost principles applicable to the entity making the contribution (*i.e.*, you or the subrecipient), as identified in FMS Article III. For property, that generally is depreciation.

2. Needed approvals for, and valuation of, property that you or subrecipients donate.

a. Types of property that may be donated.

i. Buildings or land. If the purposes of this award include construction, facilities acquisition, or long-term use of real property, you may donate buildings or land to the project if you obtain our prior approval. Donation of property to the project, as described in PROP Article I, means counting the value of the property toward cost sharing or matching, rather than charging depreciation.

ii. Other capital assets. If you obtain our prior approval, you may donate to the project other capital assets identified in 2 CFR 200.439(b)(1) through (3).

b. Usual valuation of donated property. Unless you obtain our approval as described in paragraph E.2.c of this article, the value for the donated property must be the lesser of:

i. The value of the remaining life of the property recorded in your accounting records at the time of donation, or

ii. The current fair market value.

c. Approval needed for alternative valuation of property. If you obtain our approval in the approved budget, you may count as cost sharing or matching the current fair market value of the donated property even if it exceeds the value of the remaining life of the property recorded in your accounting records at the time of donation.

d. Federal interest in donated property. Donating buildings, land, or other property to the project, rather than charging depreciation, results in a Federal interest in the property in accordance with PROP Article I of these terms and conditions.

VI. **SECTION F OF FMS ARTICLE VI.** DoD Components must use the following default wording in Section F of FMS Article VI or reserve the section, in accordance with § 1128.635 of this part:

Section F. Valuation of third-party in-kind contributions.

1. General. If a third party furnishes goods or services to you or subrecipients that are to be counted toward cost sharing or matching under this award, the entity to which the third party furnishes the goods or services (*i.e.*, you or a subrecipient) must document the fair market value of those in-kind contributions and, to the extent feasible, support those values using the same methods the entity uses internally.

2. Valuation of third-party services. You must establish values for third-party volunteer services and services of third parties' employees furnished to you or subrecipients as follows:

a. Volunteer services. Volunteer services furnished by third party professional and technical personnel, consultants, and other skilled and unskilled labor must be valued in accordance with 2 CFR 200.306(e).

b. Services of third parties' employees. When a third-party organization furnishes the services of its employees to you or a subrecipient, values for the contributions must be established in accordance with 2 CFR 200.306(f).

c. Additional requirement for donations to nonprofit organizations. For volunteer services or services of third parties' employees furnished to a nonprofit organization:

i. OMB guidance in 2 CFR 200.434(e) also applies and may require the nonprofit organization to allocate a proportionate share of its applicable indirect costs to the donated services.

ii. The indirect costs that the nonprofit organization allocates to the donated services in that case must be considered project costs and may be either reimbursed under the award or counted toward required cost sharing or matching, but not both.

2. Valuation of third-party property. You must establish values for third-party property furnished to you or subrecipients as follows:

a. Supplies donated by third parties. When a third party organization donates supplies (*e.g.*, office, laboratory, workshop, or classroom supplies), the value that may be counted toward cost sharing or matching may not exceed the fair market value of the supplies at the time of donation.

b. Equipment, buildings, or land donated by third parties.

i. The value of third-party donations of equipment, buildings, or land that may be counted toward cost sharing or matching when the third party transferred title to you or a subrecipient depends on the purpose of the award in accordance with the following:

A. If one of the purposes of the award is to assist you or the subrecipient in the acquisition of equipment, buildings, or land, you may count the aggregate fair market value of the donated property toward cost sharing or matching.

B. If the award's purposes instead include only the support of activities that require the use of equipment, buildings, or land, you may only charge depreciation unless you obtain our prior approval to count as cost sharing or matching the fair market value of equipment or other capital assets and fair rental charges for land.

ii. The values of the donated property must be determined in accordance with the usual accounting policies of the entity to which the third party transferred title to the property, with the qualifications specified in 2 CFR 200.306(i)(1) and (2) for donated land and buildings and donated equipment, respectively.

c. Use of space donated by third parties. If a third party makes space available for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed the fair rental value of comparable space as established by an independent appraisal, as described in 2 CFR 200.306(i)(3).

d. Equipment loaned by third parties. If a third party loans equipment for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed its fair rental value.

#### **Appendix G to Part 1128—Terms and Conditions for FMS Article VII, “Program Income”**

I. **SECTION A OF FMS ARTICLE VII.** DoD Components must use as Section A of FMS Article VII either the following default

wording in accordance with § 1128.705 of this part, or revised wording compliant with § 1128.710 of this part:

FMS Article VII. Program income. (December 2014)

Section A. Definition. The term “program income” as used in this award:

1. Is gross income that:

a. You earn that is directly generated by a supported activity or earned as a result of this award; or

b. A subrecipient earns as a result of a subaward you make under this award.

2. Includes, but is not limited to, income earned under this award from:

a. Fees for services performed;

b. The use or rental of real or personal property acquired under any Federal award and currently administered under this award;

c. The sale of commodities or items fabricated under this award; and

d. License fees and royalties on patents and copyrights;

e. Payments of principal and interest on loans made with Federal award funds.

3. Does not include for purposes of this award any:

a. Interest earned on advance payments, disposition of which is addressed in FMS Article II;

b. Proceeds from the sale of real property, equipment or supplies, which is addressed in PROP Articles III and IV;

c. Rebates, credits, discounts, and interest earned on any of them; and

d. Governmental revenues, including any taxes, special assessments, levies, fines and similar revenues you raise.

II. **SECTIONS B AND C OF FMS ARTICLE VII.** DoD Components must use the following default wording as Sections B and C of FMS Article VII in accordance with § 1128.705 of this part:

Section B. Encouragement to earn program income. You are encouraged to earn program income under this award when doing so does not interfere with the program or project the award supports.

Section C. Costs of generating program income. You may deduct costs incidental to the generation of program income from the amount that you use in accordance with Section E of this Article, as long as those costs are not charged to this award (which includes their being counted toward any cost sharing or matching you are required to provide).

III. **SECTION D OF FMS ARTICLE VII.** DoD Components must either use the following default wording as Section D of FMS Article VII in accordance with § 1128.705 of this part or reserve the section if doing so complies with § 1128.715 of this part:

Section D. License fees and royalties. You have no obligations to the Federal Government with respect to program income earned under this award from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions developed or produced under the award.

IV. **SECTION E OF FMS ARTICLE VII.** DoD Components must use either the following default wording as Section E of FMS Article VII or alternative wording that complies with § 1128.720 of this part:



Section E. Use of program income.  
 1. You must use any program income that you earn during the period of performance under this award to increase the amount of the award (the sum of the Federal share and any cost sharing or matching you are required to provide), thereby increasing the amount budgeted for the project. The program income must be used for the purposes and under the terms and conditions of the award.

2. Your use of the additional funding is subject to the terms and conditions of this award, including:

a. FMS Article II concerning your use of balances of program income before you request additional funds from us; and

b. FMS Article III concerning allowability of costs for which the funds may be used.

3. You must report on each Federal Financial Report (SF-425) that you submit in accordance with REP Article II the program income that you earn and any that you use during the reporting period covered by that SF-425.

V. SECTION F OF FMS ARTICLE VII. DoD Components must use the following default wording as Section F of FMS Article VII in accordance with § 1128.725 of this part:

Section F. Duration of accountability for program income. The requirements concerning disposition of program income in Section E of this Article apply only to program income you earn during the period of performance. There are no requirements under this award applicable to program income you earn after the end of the period of performance.

**PART 1130—PROPERTY ADMINISTRATION: GENERAL AWARD TERMS AND CONDITIONS**

Sec.

- 1130.1 Purpose of this part.
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**Subpart A—Title to Property (PROP Article I)**

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Appendix F to Part 1130—Terms and conditions for PROP Article VI, “Intangible property”

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

**§ 1130.1 Purpose of this part.**

(a) This part specifies standard wording of general terms and conditions concerning equipment, supplies, and real, intangible, and federally owned property.

(b) It thereby implements OMB guidance in 2 CFR 200.310 through 200.316, as that guidance applies to general terms and conditions.

**§ 1130.2 Applicability of this part.**

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

**§ 1130.3 Exceptions from requirements of this part.**

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

**§ 1130.4 Organization of this part.**

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through F to this part (with the associated direction to DoD Components in subparts A through F, respectively):

In . . .	You will find terms and conditions specifying recipients’ rights and responsibilities related to . . .	That would appear in an award with in PROP Article . . .
Appendix A .....	Title to property .....	I.
Appendix B .....	Property management system .....	II.
Appendix C .....	Use and disposition of real property .....	III.
Appendix D .....	Use and disposition of equipment and supplies .....	IV.
Appendix E .....	Use and disposition of federally owned property .....	V.
Appendix F .....	Intangible property .....	VI.

**Subpart A—Title to Property (PROP Article I)****§ 1130.100 Purpose of PROP Article I.**

PROP Article I specifies in whom and under what conditions title to property vests under the award. It thereby implements OMB guidance:

(a) Pertaining to vesting of title to property, in 2 CFR 200.311(a), 200.312(a), 200.313(a), 200.314(a), and 200.315(a).

(b) Pertaining to the property trust relationship in 2 CFR 200.316.

**§ 1130.105 Title to property acquired under awards.**

(a) *General policy.* Title to tangible property that a recipient acquires under an award (whether by purchase, construction or fabrication, development, or otherwise), and title to intangible property that a recipient acquires other than by developing or producing it under an award, generally vests in the recipient subject to the conditions in PROP Articles II–IV and Section D of PROP Article VI, which protect the Federal interest in the property.

(b) *Exceptions to the general policy when there is statutory authority—(1) Exempt property in general.* If a DoD Component has statutory authority to do so, it may vest title in recipients to property acquired under awards either unconditionally or subject to fewer conditions than those in PROP Articles II–IV and VI. This subpart refers to acquired property for which a DoD Component has such statutory authority—and elects to use it—as “exempt property.”

(2) *Research awards.* (i) Under 31 U.S.C. 6306, a DoD Component may vest title to tangible personal property (*i.e.*, equipment and supplies) in a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research—without further obligation to the Government or subject to conditions the DoD Component deems appropriate—if the property is bought with amounts provided under a grant or cooperative agreement for basic or applied research.

(ii) As a matter of policy, to enhance the university infrastructure for future performance of defense research and research-related education and training, DoD Components shall make maximum use of the authority of 31 U.S.C. 6306 to vest title to equipment in nonprofit institutions of higher education subject to only the following three conditions:

(A) The recipient uses the equipment for the authorized purposes of the

project or program until the property is no longer needed for those purposes.

(B) The recipient manages the equipment as provided in PROP Article II of the general terms and conditions (see subpart B of this part). This includes maintaining property records that include the percentage of Federal participation in the costs of the project or program under which the recipient acquired the exempt property, so that the recipient may deduct the Federal share if it wishes to use the property in future contributions for cost sharing or matching purposes on Federal awards.

(C) The DoD Component reserves the right to transfer title to the equipment to another recipient entity if the Principal Investigator relocates his or her research program to that entity.

(c) *Award terms and conditions—(1) General.* Unless a DoD Component has a statute authorizing it to identify acquired property as exempt property, as described in paragraph (b) of this section, it must use the default wording Appendix A to this part provides for Section A of PROP Article I.

(2) *Exceptions.* (i) If a DoD Component has statutory authority such as described in paragraph (b) of this section, and elects to use that authority for awards subject to its general terms and conditions, it must insert wording in paragraph A.2 of PROP Article I to:

(A) Identify the type or types of property it is excepting from the standard requirements for title vesting, use, and disposition contained in PROP Articles II through IV and VI and reporting requirements contained in REP Article III of the general terms and conditions.

(B) If it is excepting the property from some, but not all, of the standard requirements, identify the requirements to which the exempt property will be subject.

(ii) Paragraph A.2 of PROP Article I in general terms and conditions used for research awards to institutions of higher education generally should provide for vesting of title to acquired equipment in those institutions subject only to the three conditions described in paragraph (b)(2)(ii) of this section.

**§ 1130.110 Property trust relationship.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.316 describes the property trust relationship. It states that:

(1) Recipients must hold real property, equipment, and intangible property acquired or improved under grants or cooperative agreements in trust for the beneficiaries of the projects or programs under which the property was acquired or improved; and

(2) A Federal agency may require a recipient to record liens or other appropriate notices of record to indicate that personal or real property was acquired or improved under a grant or cooperative agreement, making the property’s use and disposition subject to the award terms and conditions.

(b) *DoD implementation.* A DoD Component’s general terms and conditions must specify that recipients hold title to real property, equipment, and intangible property acquired or improved under DoD grants and cooperative agreements in trust for the beneficiaries of the projects or programs carried out under those awards.

(c) *Award terms and conditions.* A DoD Component’s general terms and conditions:

(1) Must include the default wording appendix A to this part provides for paragraph B.1 of PROP Article I, except that a DoD Component may instead reserve Section B if there will be no acquisition or improvement of real property, equipment, or intangible property under awards using those general terms and conditions or subawards under those awards.

(2) May add wording to the reserved paragraph B.2 of the default wording of Section B of PROP Article I to require recipients to record liens or other notices of record, as described in paragraph (a) of this section.

**§ 1130.115 Title to federally owned property.**

(a) *Requirement.* A DoD Component’s general terms and conditions must include the default wording appendix A to this part provides for Section C of PROP Article I to affirm that title to federally owned property remains with the Government.

(b) *Exception.* A DoD Component may reserve Section C if it provides no federally owned property under its awards.

**§ 1130.120 Federal interest in donated property.**

(a) *Requirement.* A DoD Component’s general terms and conditions must inform recipients that the Government acquires an interest in any real property or equipment for which the value of the remaining life of the property in the recipient’s accounting records or the fair market value of the property is counted toward required cost sharing or matching, rather than charging depreciation.

(b) *Award terms and conditions.* A DoD Component’s general terms and conditions therefore must either:

(1) Include the default wording appendix A to this part provides for

Section D of PROP Article I to specify the Federal interest in donated real property or equipment; or

(2) Reserve Section D of PROP Article I if the DoD Component does not permit recipients to count the fair market value of real property or equipment toward cost sharing or matching.

**§ 1130.125 Federal interest in property improved under awards.**

(a) *Requirement.* General terms and conditions for DoD grants and cooperative agreements must address the Federal interest in improvements to real property or equipment that results if a recipient directly charges the costs of the improvements to an award.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the default wording appendix A to this part provides for Section E of PROP Article I to specify the Federal interest in improved real property or equipment; or

(2) Reserve Section E of PROP Article I if there will be no improvements to real property or equipment under awards using those general terms and conditions or subawards under those awards.

**Subpart B—Property Management System (PROP Article II)**

**§ 1130.200 Purpose of PROP Article II.**

(a) PROP Article II prescribes standards for:

(1) Insurance coverage for real property and equipment acquired or improved under awards;

(2) The system that a recipient uses to manage both equipment that is acquired or improved in whole or in part under awards and federally owned property.

(b) It thereby implements OMB guidance in 2 CFR 200.310, and 200.313(d)(1) through (4), and partially implements 2 CFR 200.313(b).

**§ 1130.205 Insurance coverage for real property and equipment.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.310 includes a requirement for recipients' insurance coverage for real property and equipment acquired or improved under awards and states that federally owned property need not be insured unless required by Federal award terms and conditions.

(b) *DoD implementation.* A DoD Component's general terms and conditions must require recipients to provide insurance coverage for real property and equipment acquired or improved under awards. However, unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public

comment specifies otherwise, DoD awards will not require recipients to insure federally owned property.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the default wording appendix B to this part provides for Section A of PROP Article II; or

(2) Reserve Section A of PROP Article II if there will be no real property or equipment acquired or improved under awards using those terms and conditions or subawards under those awards.

**§ 1130.210 Other management system standards for States.**

(a) *Requirement.* DoD Components' general terms and conditions must address the standards for States' property management systems.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the default wording appendix B to this part provides for Section B of PROP Article II; or

(2) Reserve Section B of PROP Article II if no State will acquire or improve equipment, in whole or in part, or be accountable for federally owned property under awards using those general terms and conditions or subawards under those awards.

**§ 1130.215 Other management system standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.**

(a) *Requirement.* DoD Components' general terms and conditions must address the standards for property management systems of institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions therefore must either:

(1) Include the default wording appendix B to this part provides for Section C of PROP Article II; or

(2) Reserve Section C of PROP Article II if no institution of higher education, nonprofit organization, local government, or Indian tribe will acquire or improve equipment, in whole or in part, or be accountable for federally owned property under awards using those general terms and conditions or subawards under those awards.

**Subpart C—Use and Disposition of Real Property (PROP Article III)**

**§ 1130.300 Purpose of PROP Article III.**

PROP Article III specifies requirements for recipients' use and disposition of real property acquired or

improved under an award. It thereby implements OMB guidance in 2 CFR 200.311(b) and (c).

**§ 1130.305 Use of real property.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.311(b) states that, except as otherwise provided by Federal statute or the Federal awarding agency, a recipient must use real property acquired or improved under an award for the originally authorized purpose as long as needed for that purpose, during which time the recipient must not dispose of the property or encumber its title or other interests.

(b) *DoD implementation.* Unless a statute or program regulation adopted in the Code of Federal Regulations after opportunity for public comment specifies otherwise, DoD awards must permit recipients to do the following:

(1) While real property acquired or improved under an award still is needed for the authorized purpose, also use it for other projects or programs that either are supported by DoD Components or other Federal agencies or not federally supported, as long as that use does not interfere with the property's use for the authorized purpose.

(2) After the real property no longer is needed for the authorized purpose, with the written approval of the award administration office, use the property on other federally supported projects or programs that have purposes consistent with those authorized for support by the DoD Component that made the award under which the property was acquired or improved.

(c) *Award terms and conditions.* DoD Component general terms and conditions must either:

(1) Include the default wording appendix C to this part provides for Section A of PROP Article III; or

(2) If a statute or program regulation in the Code of Federal Regulations specifies different requirements for recipients' use of real property, substitute alternative wording for Section A to specify those requirements.

**§ 1130.310 Disposition of real property.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.311(c):

(1) Addresses the recipient's responsibility to request disposition instructions for real property when the recipient no longer needs it for the originally authorized purpose; and

(2) Identifies three alternative disposition methods those instructions may specify.

(b) *DoD implementation.* DoD implements the guidance in 2 CFR 200.311(c) through award terms and conditions that govern disposition of

real property acquired or improved under awards.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the default wording appendix C to this part provides for Section B of PROP Article III to specify requirements concerning disposition of real property acquired or improved under awards.

#### **Subpart D—Use and Disposition of Equipment and Supplies (PROP Article IV)**

##### **§ 1130.400 Purpose of PROP Article IV.**

PROP Article IV specifies requirements for recipients' use and disposition of equipment and supplies in which there is a Federal interest. It thereby implements OMB guidance in:

(a) 2 CFR 200.313(a) through (c), 200.313(d)(5), and 200.313(e) as that guidance applies to requirements for use and disposition of equipment; and

(b) 2 CFR 200.314, as that guidance applies to requirements for use and disposition of supplies acquired under an award.

##### **§ 1130.405 Property subject to PROP Article IV.**

(a) *Requirement.* DoD Components' general terms and conditions must identify the types of non-exempt property to which requirements for use and disposition of equipment and supplies apply.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the default wording appendix D to this part provides for Section A of PROP Article IV. That wording identifies the categories of equipment and supplies in which there is a Federal interest, which are the categories to which the requirements for use and disposition apply.

##### **§ 1130.410 Requirements for a State's use and disposition of equipment.**

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.313(a) sets forth basic conditions for use of equipment acquired under an award that apply when title to the equipment is vested in a recipient conditionally, because the awarding agency either does not have statutory authority to vest title in the equipment unconditionally or elects not to do so.

(2) 2 CFR 200.313(b) provides that a State must use, manage, and dispose of equipment in accordance with State laws and procedures.

(b) *DoD implementation.* DoD implements 2 CFR 200.313(a) and (b) through award terms and conditions

that govern States' use and disposition of equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix D to this part provides for Section B of PROP Article IV to specify the requirements for a State's use and disposition of equipment in which there is a Federal interest.

##### **§ 1130.415 Use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.**

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.313(a) sets forth basic conditions for use of equipment acquired under an award that apply when title to the equipment is vested in a recipient conditionally, because the awarding agency either does not have statutory authority to vest title in the equipment unconditionally or elects not to do so.

(2) 2 CFR 200.313(c) provides for use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(3) 2 CFR 200.313(d)(5) calls for use of sales procedures to ensure highest possible return when selling equipment.

(b) *DoD implementation.* For equipment in which there is a Federal interest under awards to institutions of higher education, nonprofit organizations, local governments, or Indian tribes, DoD implements through award terms and conditions the following portions of 2 CFR part 200 as they apply to use of equipment prior to the time of its disposition:

(1) 2 CFR 200.313(a) and (c); and  
(2) 2 CFR 200.313(d)(5), as it applies to equipment sales prior to the time of disposition, to offset the acquisition cost of replacement equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix D to this part provides for Section C of PROP Article IV to specify the requirements for use of equipment described in paragraph (b) of this section.

##### **§ 1130.420 Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.313(e) addresses disposition of original or replacement equipment acquired under an award by an institution of higher education, nonprofit organization, local government, or Indian tribe.

(b) *DoD implementation.* DoD implements 2 CFR 200.313(e) through award terms and conditions that govern

disposition of original or replacement equipment acquired under an award by an institution of higher education, nonprofit organization, local government, or Indian tribe when there is a Federal interest in the equipment.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix D to this part provides for Section D of PROP Article IV to specify the requirements for disposition of equipment described in paragraph (b) of this section.

##### **§ 1130.425 Use and disposition of supplies.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.314 sets forth requirements for use and disposition of supplies acquired under an award.

(b) *DoD implementation.* DoD implements 2 CFR 200.314 through award terms and conditions that govern use and disposition of supplies acquired under awards either by purchase or by donation as cost sharing or matching.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix D to this part provides for Section E of PROP Article IV to specify the requirements for use and disposition of acquired supplies.

#### **Subpart E—Use and Disposition of Federally Owned Property (PROP Article V)**

##### **§ 1130.500 Purpose of PROP Article V.**

PROP Article V specifies requirements for recipients' use and disposition of federally owned property. It implements the portion of OMB guidance in 2 CFR 200.312(a) that applies to disposition of federally owned property.

##### **§ 1130.505 Content of PROP Article V.**

A DoD Component's general terms and conditions must either:

(a) Include the default wording appendix E to this part provides for PROP Article V to specify requirements for use and disposition of federally owned property; or

(b) Reserve PROP Article V if there is no possibility of recipients or subrecipients being accountable for federally owned property under awards using those terms and conditions.

#### **Subpart F—Intangible Property (PROP Article VI)**

##### **§ 1130.600 Purpose of PROP Article VI.**

PROP Article VI sets forth the rights and responsibilities of recipients and the Government with respect to intangible property. It thereby

implements OMB guidance in 2 CFR 200.315.

**§ 1130.605 Copyrights asserted in works developed or otherwise acquired under awards.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(b) addresses recipients' and the Government's rights related to works that recipients may copyright.

(b) *DoD implementation.* DoD implements 2 CFR 200.315(b) through award terms and conditions that specify recipient and Government rights with respect to copyrightable works.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix F to this part provides for Section A of PROP Article VI to affirm the recipient's right to assert copyright in works it develops or otherwise acquires under an award, as well as the Government's right to use the works for Federal purposes.

**§ 1130.610 Inventions developed under awards.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(c) states that recipients are subject to applicable regulations concerning patents and inventions, including Department of Commerce regulations at 37 CFR part 401.

(b) *DoD implementation.* In implementing 2 CFR 200.315(c) for awards for the performance of experimental, developmental, or research work, DoD:

(1) Extends to other entities the patent rights provisions of chapter 18 of Title 35 of the U.S. Code and 37 CFR part 401 that directly apply to small business firms and nonprofit organizations. This broadened applicability is in accordance with the February 18, 1983, Presidential memorandum on Government patent policy, referred to in Executive Order 12591, "Facilitating Access to Science and Technology."

(2) Establishes a default requirement for recipients to provide final reports listing all subject inventions under their awards or stating there were none, a requirement that 37 CFR 401.5(f)(1) provides as an agency option.

(3) Incorporates the prohibition in 35 U.S.C. 212 on asserting Federal Government rights in inventions made by recipients of scholarships, fellowships, training grants, or other awards made primarily for educational purposes.

(c) *Award terms and conditions.* (1) *Awards for research, developmental, or experimental work.* A DoD Component's general terms and conditions for awards for the performance of experimental, developmental, or research work funded

in whole or in part by the Government must include the default wording appendix F to this part provides for Section B of PROP Article VI, with one permitted exception. The exception is that a DoD Component may reserve or substitute alternative wording for paragraph B.2.b of Section B of PROP Article VI, as appropriate, if it elects to:

(i) Omit the requirement for final invention reports;

(ii) Substitute "120 calendar days" for "90 calendar days" to provide an additional 30 days for recipient's submissions of final reports after the end date of the period of performance; or

(iii) Include a requirement for recipients to submit information about each patent application they submit for a subject invention, interim listings of all subject inventions, or both, which the Department of Commerce regulations at 37 CFR 401.5(f)(2) and (3) permit agencies to require.

(2) *Awards for primarily educational purposes.* A DoD Component's general terms and conditions for awards to support scholarships or fellowships, training grants, or other awards for primarily educational purposes must replace the default wording appendix F to this part provides for Section B of PROP Article VI with an alternative award provision stating that the Federal Government will have no rights to inventions made by recipients.

(3) *Awards for other purposes.* A DoD Component developing general terms and conditions for awards other than those described in paragraphs (c)(1) and (2) of this section should:

(i) Consult its intellectual property counsel if it anticipates that recipients may develop patentable inventions under its awards, to identify any applicable statutes or regulations and determine an appropriate substitute for the default wording appendix F to this part provides for Section B of PROP Article VI; or

(ii) Reserve Section B of PROP Article VI if it does not expect development of any patentable inventions under those awards.

**§ 1130.615 Data produced under awards.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(d) and (e) addresses rights in data under awards.

(b) *DoD implementation.* DoD implements 2 CFR 200.315(d) and (e) through award terms and conditions.

(c) *Award terms and conditions—*(1) *General.* A DoD Component's general terms and conditions must include the default wording appendix F to this part provides for Section C of PROP Article VI.

(2) *Exception.* A DoD Component may reserve paragraph C.2 of Section C of PROP Article VI in its general terms and conditions if:

(i) Those terms and conditions will not be used for research awards; and

(ii) The DoD Component determines that no research data as defined in 2 CFR 200.315 will be generated under the awards using those terms and conditions.

**§ 1130.620 Intangible property acquired, but not developed or produced, under awards.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.315(a) addresses use and disposition of intangible property that is acquired under awards (in addition to vesting of title, which is implemented in § 1130.105 and appendix A to this part).

(b) *DoD implementation.* DoD implements 2 CFR 200.315(a) through award terms and conditions that govern use and disposition of intangible property that is acquired, but not developed or produced, under awards.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the default wording appendix F to this part provides for Section D of PROP Article VI.

**Appendix A to Part 1130—Terms and Conditions for PROP Article I, "Title To Property"**

I. *SECTION A OF PROP ARTICLE I.* DoD Components must use as Section A of PROP Article I the following default wording in accordance with § 1130.105 of this part, which permits addition of wording to paragraph A.2 if statutory authority exists:

**PROP Article I. Title to Property. (December 2014)**

*Section A. Title to property acquired under this award.*

1. *General.* Other than any property identified in paragraph A.2 of this section as exempt property:

a. Title to real property, equipment, and supplies that you acquire (whether by purchase, construction or fabrication, development, or otherwise) and charge as direct project costs under this award vests in you, the recipient. Title to intangible property that you acquire (other than by developing or producing it) under this award also vests in you.

b. That title is a conditional title, subject to the terms and conditions in PROP Articles II–IV, Section D of PROP Article VI, and REP Article III of this award.

c. There is a Federal interest in the property, other than intangible property that you develop or produce under the award. For real property, equipment, and intangible property, we retain this Federal interest until final disposition of the property under PROP Article III (for real property), PROP Article IV (for equipment), or Section D of PROP Article

VI (for intangible property that is acquired, other than by developing or producing it), a period that in some cases may extend beyond closeout of this award.

2. *Exempt property.* [Reserved].

II. **SECTION B OF PROP ARTICLE I.** DoD Components must use as Section B of PROP Article I the following default wording in accordance with § 1130.110 of this part, which permits insertion of wording in the reserved paragraph B.2 to specify requirements for liens or other notices of record:

*Section B. Property trust relationship.*

1. *Basic requirement.* Other than intangible property that you develop or produce under the award, you hold any real property, equipment, or intangible property that you acquire or improve under this award in trust for the beneficiaries of the project or program that you are carrying out under the award.

2. *Notices of record.* [Reserved].

III. **SECTION C OF PROP ARTICLE I.** DoD Components must use as Section C of PROP Article I the following default wording in accordance with § 1130.115 of this part:

*Section C. Federally owned property.* Title to any federally owned property that we provide to you under this award (or for which accountability is transferred to this award from another Federal award) remains with the Government.

IV. **SECTION D OF PROP ARTICLE I.** DoD Components must either use the following default wording as Section D of PROP Article I, or reserve Section D, in accordance with § 1130.120 of this part:

*Section D. Federal interest in donated real property or equipment.* If real property or equipment is acquired under this award through your donation of the property to the project or program (*i.e.*, counting the value of the remaining life of the property recorded in your accounting records or the fair market value as permitted under FMS Article VI of this award as part of your share of project costs to meet any cost sharing or matching requirements, rather than charging depreciation):

1. The Government acquires through that donation an interest in the real property or equipment, the value of which at any given time is the product of:

- a. The Federal share of the project costs under this award; and
- b. The current fair market value of the property at that time.

2. The real property or equipment is subject to Section B of this article and the terms and conditions of PROP Articles II–IV and REP Article III that are applicable to property acquired under the award.

3. The Federal interest in the real property or equipment must be addressed at the time of property disposition.

V. **SECTION E OF PROP ARTICLE I.** DoD Components must either use the following default wording as Section E of PROP Article I, or reserve Section E, in accordance with § 1130.125 of this part:

*Section E. Federal interest in property improved under the award.*

1. The Government has an interest in improvements (as distinct from ordinary repairs and maintenance) you make to an item of real property or equipment if you

charge the costs of the improvements as direct costs to this award.

2. We thereby acquire an interest in the property if the Government did not previously have one. If the Government already had an interest in the property, the value of that Federal interest in the property increases by the amount of the Federal interest in the improvements.

3. The property is subject to Section B of this article and the terms and conditions of PROP Articles II–IV and REP Article III that are applicable to real property or equipment acquired under the award.

4. The Federal interest must be addressed at the time of property disposition.

## Appendix B to Part 1130—Terms and Conditions for PROP Article II, “Property Management System”

I. **SECTION A OF PROP ARTICLE II.** DoD Components must either use the following default wording as Section A of PROP Article II, or reserve Section A, in accordance with § 1130.205 of this part:

### PROP Article II. Property Management System. (December 2014)

*Section A. Insurance coverage for real property and equipment.* You must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved under this award as you provide for real property and equipment that you own.

II. **SECTION B OF PROP ARTICLE II.** DoD Components must either use the following default wording as Section B of PROP Article II, or reserve Section B, in accordance with § 1130.210 of this part:

*Section B. Other management system standards for a State.*

1. *Equipment.* Your property management system for equipment acquired or improved in whole or in part under this award must be in accordance with your State laws and procedures.

2. *Federally owned property.* You may use your own property management system for any federally owned property for which you are accountable, as long as it meets the following minimum standards:

- a. *Records.* Your records must include for each item of federally owned property:
  - i. A description of the item.
  - ii. The location of the item.
  - iii. The serial or other identification number.
  - iv. Which Federal agency holds title.
  - v. The date you received the item.
  - vi. Any data on the ultimate disposition of the item, such as the date of disposal.
  - vii. The Federal award identification number of the award under which you are accountable for the item.

b. *Inventory.* You must take a physical inventory of federally owned property at least biennially and reconcile the results with your records.

c. *Control system.* You must:

i. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of federally owned property.

ii. Investigate any loss, damage, or theft of federally owned property and promptly notify the award administration office.

d. *Maintenance.* You must maintain the property in good condition.

II. **SECTION C OF PROP ARTICLE II.** DoD Components must use the following default wording as Section C of PROP Article II in accordance with § 1130.215 of this part:

*Section C. Other management system standards for an institution of higher education, nonprofit organization, local government, or Indian tribe.* Your procedures for managing equipment (including replacement equipment) acquired or improved in whole or in part under this award and any federally owned property for which you are accountable under this award must, as a minimum, meet the requirements in this section.

1. *Records.* You must maintain records that include for each item of equipment or federally owned property:

- a. A description of the item.
- b. The serial or other identification number.
- c. Who holds title (*e.g.*, you or the Government and, if the latter, which Federal agency).

d. The source of funding for the equipment, including the award number, or the source of the federally owned property, including the award number of the award under which you are accountable for the property.

e. The acquisition date and cost of the equipment (or improvement to the equipment) or the date you received the federally owned property.

f. The location, use, and condition of the equipment or federally owned property.

g. Information from which one can calculate the amount of the Federal interest in the acquisition or improvement of the item (this amount is zero after you compensate us for the Federal interest in the item or improvement).

h. Any data on the ultimate disposition of the item including the date of disposal and sale price.

2. *Labelling.* You must ensure that property owned by the Federal Government is labeled to identify it as federally owned property.

3. *Inventory.* You must take a physical inventory of equipment in which there is a Federal interest and reconcile the results with your records at least once every 2 years.

4. *Control system.* You must:

a. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of equipment and federally owned property.

b. Investigate any loss, damage, or theft and notify the award administration office if it involved equipment in which there is a Federal interest under the award or federally owned property.

5. *Maintenance.* You must maintain equipment acquired or improved in whole or in part under the award and federally owned property in good condition.

### Appendix C to Part 1130—Terms and Conditions for PROP Article III, “Use and Disposition of Real Property”

I. *SECTION A OF PROP ARTICLE III.* DoD Components must use either the following default wording or alternative wording as Section A of PROP Article III, in accordance with § 1130.305 of this part:

#### PROP Article III. Use and Disposition of Real Property. (December 2014)

##### *Section A. Use of real property.*

1. You must use real property acquired or improved under this award for the originally authorized purpose as long as needed for that purpose. During that time, you may not:

a. Dispose of the property except, with the approval of the award administration office, to acquire replacement property under this award, in which case you may use the proceeds from the disposition as an offset to the cost of the replacement property; or

b. Encumber the title or other interests in the property without the approval of the award administration office identified in this award.

2. During the time that the real property is used for the originally authorized purpose, you may make the property available for use on other projects or programs, but only if that use will not interfere with the property’s use as needed for its originally authorized purpose.

a. First preference must be given to other projects or programs supported by DoD Components and second preference to those supported by other Federal agencies.

b. Third preference is for other projects or programs not currently supported by the Federal Government. You should charge user fees for use of the property in those cases, if it is at all practicable.

3. When the real property is no longer needed for the originally authorized purpose, with the written approval of the award administration office, you may delay final disposition of the property to use it on other federally sponsored projects or programs. A condition for the award administration office’s approval is that the other projects or programs have purposes consistent with those authorized for support by the DoD Component that made the award under which the property was acquired or improved.

II. *SECTION B OF PROP ARTICLE III.* DoD Components must use the following default wording as Section B of PROP Article III in accordance with § 1130.310 of this part:

##### *Section B. Disposition of real property.*

When you no longer need real property for the originally authorized purpose, you must obtain disposition instructions from the award administration office except as provided in paragraph A.3 of this article. Those instructions will provide for one of the following three alternatives, which are that you:

1. Retain title after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of “Federal interest.”

2. Sell the property and compensate us for the Federal interest in the property, as described in 2 CFR 200.311(c)(2).

3. Transfer title to us or a third party we designate, as described in 2 CFR 200.311(c)(3).

### Appendix D to Part 1130—Terms and Conditions for PROP Article IV, “Use and Disposition of Equipment and Supplies”

DoD Components must use as Sections A through F of PROP Article IV the following default wording in accordance with §§ 1130.405 through 1130.425 of this part:

#### PROP Article IV. Use and Disposition of Equipment and Supplies. (December 2014)

##### *Section A. Property subject to this article.*

This article specifies requirements for use and disposition of equipment and supplies. If a provision of PROP Article I or an award-specific term or condition of this award identifies any equipment or supplies as exempt property, requirements of this Article apply to that exempt property only to the extent specified in that provision of PROP Article I or the award-specific term or condition. The types of non-exempt property to which this article applies are:

1. Supplies that you acquire either by purchase or by donation as cost sharing or matching under this award; and

2. Equipment for which title is vested conditionally in you. That includes equipment with a conditional title resulting from your having, either under this award or under a previous award from which you transferred accountability for the equipment to this award:

a. Directly charged as project costs, in whole or in part, the acquisition (by purchase, construction or fabrication, or development) of equipment;

b. Donated the equipment to the project or program by counting the value of the remaining life of the property recorded in your accounting records or the fair market value toward any cost sharing or matching requirements under the award, rather than charging depreciation (see PROP Article I, Section D); or

c. Directly charged as project costs improvements to the equipment that meet the criteria given in paragraph E.1 of PROP Article I.

##### *Section B. Requirements for a State’s use and disposition of equipment.* You:

1. Must use the equipment for the authorized purposes of the project or program during the period of performance, or until the property is no longer needed for those purposes.

2. May not encumber the property without the prior written approval of the award administration office.

3. Must use and dispose of the equipment in accordance with your State laws and procedures.

##### *Section C. Use of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.* You:

1. Must use the equipment for the authorized purposes of the project or program under this award until the equipment is no longer needed for those purposes, whether or not the project or

program continues to be supported by this award.

2. May not encumber the equipment without the prior written approval of the award administration office.

3. During the time that the equipment is used for the project or program under this award:

a. You must make the equipment available for use on other projects or programs but only if that use will not interfere with the equipment’s use as needed for the project or program supported by this award.

i. First preference must be given to other projects or programs supported or previously supported by DoD Components and second preference to those supported or previously supported by other Federal agencies.

ii. Third preference is for other projects or programs not supported by the Federal Government. You should charge user fees for use of the equipment in those cases, if it is at all practicable.

b. You may use the equipment, if you need to acquire replacement equipment, as a trade-in or sell it (using sales procedures designed to ensure the highest possible return) and use the proceeds from the sale to offset the cost of the replacement equipment.

4. When the equipment is no longer needed for the project or program under this award, you may defer final disposition of the equipment and continue to use it on other federally sponsored projects or programs. You must give first priority to other projects or programs supported by DoD Components.

5. Notwithstanding the encouragement in FMS Article VII to earn program income, you may not use equipment in which there currently is a Federal interest—whether you acquired it under this award or are otherwise accountable for it under this award—to provide services for a fee that is less than private companies charge for equivalent services.

*Section D. Disposition of equipment by an institution of higher education, nonprofit organization, local government, or Indian tribe.* You must request disposition instructions from the award administration office when either original or replacement equipment acquired under this award with a current fair market value that exceeds \$5,000 is no longer needed for the original project or program or for other federally sponsored activities as described in paragraph C.4 of this article. For each item of equipment with a current fair market value of \$5,000 or less, you may retain, sell, or otherwise dispose of the item with no further obligation to the Federal Government.

1. We may issue disposition instructions that:

a. Allow you to retain or sell any item of equipment after compensating us for the Federal interest in the property, which is to be computed as specified in the definition of “Federal interest.”; or

b. Require you to transfer title to the equipment to a Federal agency or a third party, in which case you are entitled to compensation from us for the non-Federal interest in the equipment, plus any reasonable shipping or interim storage costs incurred.

2. If we fail to provide disposition instructions for any item of equipment

within 120 calendar days of receiving your request, you may retain or sell the equipment but you must compensate us for the amount of the Federal interest in the equipment.

3. If you sell the equipment:

- i. You must use sales procedures designed to ensure the highest possible return; and
- ii. You may deduct and retain for selling and handling expenses either \$500 or ten percent of the proceeds, whichever is less.

*Section E. Use and disposition of supplies acquired under this award.*

1. *Use.* As long as we retain a Federal interest in supplies acquired under this award either by purchase or by donation as cost sharing or matching, you may not use the supplies to provide services to other organizations for a fee that is less than private companies charge for equivalent services, notwithstanding the encouragement in FMS Article VII to earn program income.

2. *Disposition.* If you have a residual inventory of unused supplies with aggregate value exceeding \$5,000 at the end of the period of performance under this award, and the supplies are not needed for any other Federal award, you must retain the supplies or sell them but must in either case compensate us for the amount of the Federal interest in the supplies. You may deduct and retain for selling and handling expenses either \$500 or ten percent of the proceeds, whichever is less.

#### **Appendix E to Part 1130—Terms and Conditions for PROP Article V, “Use and Disposition of Federally Owned Property”**

DoD Components must use as PROP Article V the following default wording in accordance with § 1130.505 of this part:

##### **PROP Article V. Use and Disposition of Federally Owned Property. (December 2014)**

*Section A. Use.* During the time that federally owned property for which you are accountable under this award is used for the project or program supported by the award, you:

1. Also may make the property available for use on other federally supported projects or programs, but only if that use will not interfere with the property’s use for the project or program supported by this award. You must give first priority to other projects or programs supported by DoD Components.

2. May use the property for purposes other than federally supported projects or programs only with the prior approval of the awarding office or, if you request approval after the award is made, the award administration office.

*Section B. Disposition.* You must request disposition instructions from the award administration office for any federally owned property under this award, including any property for which a subrecipient is accountable under a subaward you make under this award, either:

1. At any time during the period of performance if the property is no longer needed for the project or program supported by this award; or
2. At the end of the period of performance.

#### **Appendix F to Part 1130—Terms and Conditions for PROP Article VI, “Intangible Property”**

DoD Components must use as PROP Article VI the following default wording in accordance with §§ 1130.605 through 1130.620 of this part, which permit revisions or reservations of the default wording of Section B and paragraph C.2:

##### **PROP Article VI. Intangible Property. (December 2014)**

*Section A. Assertion of copyright.*

1. You may assert copyright in any work that is eligible for copyright protection if you acquire ownership of it under this award, either by developing it or otherwise.

2. With respect to any work in which you assert copyright, as described in paragraph A.1 of this section, the Department of Defense reserves a royalty-free, nonexclusive and irrevocable license to:

- a. Reproduce, publish, or otherwise use the work for Federal Government purposes; and
- b. Authorize others to reproduce, publish, or otherwise use the work for Federal Government purposes.

*Section B. Inventions developed under the award.*

1. *Applicability of Governmentwide clause for research awards.* You must comply with the Governmentwide patent rights award clause published at 37 CFR 401.14, with the modifications described in paragraph B.2 of this section. DoD adopts that Governmentwide clause for the following entities, thereby broadening the applicability beyond types of entities included in the definition of “contractor” in 37 CFR part 401:

- a. Any governmental or nonprofit entity (the types of entities subject to these general terms and conditions) receiving a DoD award for the performance of experimental, research, or developmental work;
- b. Any governmental, nonprofit, or for-profit entity receiving a subaward to perform experimental, research, or developmental work under an award described in paragraph B.1.a of this section.

2. *Modifications to the wording of the Governmentwide clause.* DoD adopts the Governmentwide clause at 37 CFR 401.14, as described in paragraph B.1 of this section, with the following modifications:

- a. *Terminology.* Throughout the Governmentwide award clause:
  - i. Insert the terms “recipient” and “subrecipient (or contractor to the recipient or to a subrecipient)” to replace the terms “contractor” and “subcontractor,” respectively.
  - ii. Insert the terms “award” and “subaward (or contract under either the award or a subaward)” to replace the terms “contract” and “subcontract,” respectively.

b. *Final report.* Add a new subparagraph (f)(5) to read, “The recipient must submit a final report listing all subject inventions made under the award or stating that there were none. The final report is due 90 calendar days after the end date of the period of performance unless you request and we grant an extension of the due date.”

c. *Broadening applicability to all entities.* Delete paragraphs (g)(2) and (3) of the

Governmentwide clause, redesignate paragraph (g)(1) as paragraph (g), and delete the phrase “to be performed by a small business firm or domestic nonprofit organization” from paragraph (g) as redesignated.

*Section C. Data produced under the award.*

1. *Data in general.* The Federal Government has the right to:

- a. Obtain, reproduce, publish, or otherwise use the data produced under this award; and
- b. Authorize others to receive, reproduce, publish, or otherwise use the data produced under this award for Federal Government purposes.

2. *Research data requested under the Freedom of Information Act (FOIA).*

a. If we receive a request under the FOIA for “research data” that are related to “published research findings” produced under this award and that were “used by the Federal Government in developing an agency action that has the force and effect of law,” you must provide the data to us within a reasonable time after we request it from you, so that the data can be made available to the public through procedures established under the FOIA.

b. For purposes of the requirement in paragraph C.2.a of this section, 2 CFR 200.315(e) provides definitions of the phrases “published research findings,” “used by the Federal Government in developing an agency action that has the force and effect of law,” and “research data.”

*Section D. Use and disposition of intangible property acquired, but not developed or produced, under the award.*

1. *Applicability.* This section applies to a patent, patent application, copyright, or other intangible property acquired, but not developed or produced, under this award.

2. *Use.* You:

- a. Must use the intangible property for the authorized purpose under this award until the intangible property is no longer needed for that purpose, whether or not that purpose is still being supported by this award.
- b. May not encumber the intangible property without the prior written approval of the award administration office.

3. *Disposition.* When the intangible property is no longer needed for the originally authorized purpose, you must contact the award administration office to arrange for disposition in accordance with the procedures specified for disposition of equipment in either section B or D of PROP Article IV, as applicable.

#### **PART 1132—RECIPIENT PROCUREMENT PROCEDURES: GENERAL AWARD TERMS AND CONDITIONS**

Sec.

- 1132.1 Purpose of this part.
- 1132.2 Applicability of this part.
- 1132.3 Exceptions from requirements of this part.
- 1132.4 Organization of this part.

##### **Subpart A—Procurement Standards for States (PROC Article I)**

- 1132.100 Purpose of PROC Article I.
- 1132.105 Content of PROC Article I.



**Subpart B—Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes (PROC Article II)**

- 1132.200 Purpose of PROC Article II.
- 1132.205 Procurement procedures.
- 1132.210 Procurement of recovered materials.
- 1132.215 Review of recipient procurement documents.
- 1132.220 Bonding requirements.

**Subpart C—Contract Provisions for Recipient Procurements (PROC Article III)**

- 1132.300 Purpose of PROC Article III.
- 1132.305 Administrative requirements.
- 1132.310 National policy requirements.
- Appendix A to Part 1132—Terms and Conditions for PROC Article I, “Procurement standards for States”
- Appendix B to Part 1132—Terms and Conditions for PROC Article II, “Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes”
- Appendix C to Part 1132—Terms and Conditions for PROC Article III, “Contract provisions for recipient procurements”

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

**§ 1132.1 Purpose of this part.**

(a) This part specifies standard wording of general terms and conditions concerning recipients’ purchases of property (supplies, equipment, and real property) and services with project funds under grants and cooperative agreements.

(b) It thereby implements OMB guidance in 2 CFR 200.317 through 200.326, and appendix II to 2 CFR part 200, as those portions of 2 CFR part 200 apply to general terms and conditions. It also partially implements 2 CFR 200.205(d), 200.213, and 200.517.

**§ 1132.2 Applicability of this part.**

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

**§ 1132.3 Exceptions from requirements of this part.**

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

**§ 1132.4 Organization of this part.**

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through C to this part (with the associated direction to DoD Components in subparts A through C, respectively):

In . . .	You will find terms and conditions specifying recipients’ rights and responsibilities related to . . .	That would appear in an award with-in PROC Article . . .
Appendix A .....	Procurement standards for States .....	I.
Appendix B .....	Procurement standards for institutions of higher education, nonprofit organizations, local governments, and Indian tribes.	II.
Appendix C .....	Contract provisions for recipient procurements .....	III.

**Subpart A—Procurement Standards for States (PROC Article I)**

**§ 1132.100 Purpose of PROC Article I.**

PROC Article I of the general terms and conditions specifies requirements for a State’s procurement of property and services. It thereby implements OMB guidance in 2 CFR 200.317 and partially implements guidance in 2 CFR 200.205(d) and 200.213.

**§ 1132.105 Content of PROC Article I.**

(a) *Requirement.* A DoD Component’s general terms and conditions must address requirements for States’ procurement systems.

(b) *Award terms and conditions.* (1) *General.* Except as provided in paragraph (b)(2) of this section, a DoD Component’s general terms and conditions must use the wording appendix A to this part provides for PROC Article I.

(2) *Exception.* A DoD Component’s general terms and conditions may instead reserve PROC Article I if the DoD Component determines that it is not possible that any States will receive:

- (i) DoD Component awards using those general terms and conditions; or
- (ii) Subawards from recipients of DoD Component awards using those general terms and conditions.

**Subpart B—Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes (PROC Article II)**

**§ 1132.200 Purpose of PROC Article II.**

PROC Article II of the general terms and conditions specifies procurement procedures for a recipient organization other than a State or for-profit entity. It thereby:

- (a) Implements OMB guidance in 2 CFR 200.318 through 200.323, 200.324(a) and (b), and 200.325;
- (b) Partially implements 2 CFR 200.205(d) and 200.213; and
- (c) Implements, in conjunction with PROC Article III, 2 CFR 200.326.

**§ 1132.205 Procurement procedures.**

(a) *Requirement.* A DoD Component’s general terms and conditions must address requirements for procurement

systems of institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

(b) *Award terms and conditions.* In order to implement the requirement described in paragraph (a) of this section, a DoD Component’s general terms and conditions must use the wording that Section I of appendix B provides for Sections A through F of PROC Article II.

**§ 1132.210 Procurement of recovered materials.**

(a) *Requirement.* General terms and conditions for DoD grants and cooperative agreements must address requirements for procurement of recovered materials if State agencies or agencies of a political subdivision of a State may receive awards using those terms and conditions or be subrecipients under those awards.

(b) *Award terms and conditions.* A DoD Component’s general terms and conditions must either:

- (1) Use the wording that Section II of appendix B provides for Section G of PROC Article II, to specify requirements

for a local government or other political subdivision of a State to comply with Resource Conservation and Recovery Act requirements; or

(2) Reserve Section G if the DoD Component determines that it is not possible that a political subdivision of a State will receive either:

(i) An award using those terms and conditions; or

(ii) A subaward under an award using those terms and conditions.

**§ 1132.215 Review of recipient procurement documents.**

(a) *Requirements.* A DoD Component's general terms and conditions must:

(1) Include a requirement for recipients to make technical specifications for proposed procurements available upon the DoD Component's request, as described in 2 CFR 200.324(a).

(2) Reserve the DoD Component's right to review a recipient's pre-procurement documents when any of the conditions described in 2 CFR 200.324(b)(1) through (5) apply and the recipient is not exempted from the requirement in accordance with 2 CFR 200.324(c).

(b) *Award terms and conditions.* To implement the requirements described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that Section III of appendix B to this part provides for Section H of PROC Article II.

**§ 1132.220 Bonding requirements.**

(a) *Requirements.* General terms and conditions for a DoD Component's grants and cooperative agreements must require each recipient to meet minimum bonding requirements if it awards any construction or facility improvement contract with a value in excess of the simplified acquisition threshold. A recipient would instead use its own bonding requirements if the DoD Component determined that the recipient's bonding policy and requirements are adequate to protect Federal interests.

(b) *Award terms and conditions—(1) General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that section IV of appendix B to this part provides for Section I of PROC Article II. The DoD Component may include a provision in the award-specific terms and conditions to override Section I of PROC Article II in each award to a recipient for which it made the determination about the recipient's

bonding policy and requirements, as described in paragraph (a) of this section.

(2) *Exceptions.* A DoD Component's general terms and conditions may omit Section I if the DoD Component determines that there will be no construction or facility improvement contracts with values in excess of the simplified acquisition threshold under awards using its general terms and conditions.

**Subpart C—Contract Provisions for Recipient Procurements (PROC Article III)**

**§ 1132.300 Purpose of PROC Article III.**

PROC Article III of the general terms and conditions specifies provisions that recipients must include in their contracts, as applicable. It thereby:

(a) Implements, in conjunction with PROC Articles I and II, OMB guidance concerning recipients' contract provisions in 2 CFR 200.317 and 200.326;

(b) Partially implements guidance in 2 CFR 200.205(d) and 200.213 concerning suspension and debarment requirements; and

(c) Partially implements guidance in 2 CFR 200.517 concerning retention and access of auditors' records.

**§ 1132.305 Administrative requirements.**

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include in their contracts standard administrative requirements related to remedies, termination, allowable costs, rights in copyrights and data, records access and retention, and reporting.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that section I of appendix C to this part provides for Section A of PROC Article III.

**§ 1132.310 National policy requirements.**

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include provisions in their contracts that require the contractors to comply with applicable national policy requirements.

(b) *Award terms and conditions—(1) General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording that Section II of appendix C to this part provides for Section B of PROC Article III.

(2) *Exceptions.* (i) The Wage Rate Requirements (Construction) statute (40

U.S.C. 3141–44, 3146, and 3147) does not apply to a program carried out through grants or cooperative agreements unless another statute makes it apply to that program. A DoD Component's general terms and conditions therefore should not include the provision that appendix C to this part includes as paragraph B.2 of PROC Article III unless another statute makes the Wage Rate Requirements statute apply to the program using those general terms and conditions.

(ii) If a DoD Component determines that any of the other national policy requirements in Section B will not apply to any of the awards subject to its general terms and conditions, the DoD Component may reserve the paragraphs of Section B addressing those requirements. Should a future need arise to include the requirements in a given award, the DoD Component may include them as award-specific terms and conditions.

**Appendix A to Part 1132—Terms and Conditions for PROC Article I, “Procurement Standards for States”**

DoD Components must use the following standard wording in PROC Article I in accordance with § 1132.105 of this part:

**PROC Article I. Procurement Standards for States. (December 2014)**

*Section A. Use of State procurement system.* Subject only to the conditions in Sections B through D of this article, you must use the same policies and procedures to procure supplies, equipment, real property, and services under this award that you use when you procure those items for State purposes using non-Federal funds.

*Section B. Procurement of recovered materials.* You must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.322.

*Section C. Debarment and suspension.* You must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

*Section D. Contract provisions.* You must include provisions in your procurement transactions under this award to require the contractors' compliance with the requirements specified in PROC Article III, as applicable.

**Appendix B to Part 1132—Terms and Conditions for PROC Article II, “Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes”**

I. SECTIONS A THROUGH F OF PROC ARTICLE II. DoD Components must use the following standard wording in Sections A

through F of PROC Article II in accordance with § 1132.205 of this part:

**PROC Article II. Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, and Indian Tribes. (December 2014)**

*Section A. General procurement standards.*

1. For procurement under this award, you must comply with the following paragraphs of OMB guidance in 2 CFR 200.318:

- a. 200.318(a) concerning documented procurement procedures;
- b. 200.318(b) concerning oversight of contractors;
- c. 200.318(c) concerning standards of conduct and conflicts of interest;
- d. 200.318(e) concerning intergovernmental or inter-entity agreements;
- e. 200.318(g) concerning value engineering;
- f. 200.318(i) concerning procurement records;
- g. 200.318(j) concerning time and material type contracts; and
- h. 200.318(k) concerning settlement of issues arising out of procurements.

i. 2 CFR 200.318(d) concerning purchases of unnecessary or duplicative items.

2. You must do business only with responsible contractors who are able to perform, as described in OMB guidance in 2 CFR 200.318(h). Related to that, you must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

*Section B. Competition.* You must award procurement transactions under this DoD award in accordance with the competition requirements described in OMB guidance in 2 CFR 200.319.

*Section C. Procurement methods.* You must award procurement transactions under this award using methods described in OMB guidance in 2 CFR 200.320.

*Section D. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.* You must take the affirmative steps described in OMB guidance in 2 CFR 200.321 when awarding procurement transactions under this award.

*Section E. Contract cost and price.* When awarding a contract under this award, you must follow the procedures related to costs and price that are described in OMB guidance in 2 CFR 200.323, using the applicable cost principles specified in FMS Article III.

*Section F. Contract provisions.* You must include provisions in your procurement transactions under this award to require the contractors' compliance with the requirements of PROC Article III, as applicable.

II. *SECTION G OF PROC ARTICLE II.* DoD Components must use the following standard wording in Section G of PROC Article II in accordance with § 1132.210 of this part:

*Section G. Procurement of recovered materials.* If you are a political subdivision of a State, you must comply with the Resource Conservation and Recovery Act

requirements described in OMB guidance in 2 CFR 200.322.

III. *SECTION H OF PROC ARTICLE II.* DoD Components must use the following standard wording in Section H of PROC Article II in accordance with § 1132.215 of this part:

*Section H. Review of procurement documents.* Upon our request, you must make available:

1. Technical specifications on proposed procurements, as described in 2 CFR 200.324(a).

2. Pre-procurement documents for our review, as described in 2 CFR 200.324(b) unless you are exempt from that requirement under 2 CFR 200.324(c).

IV. *SECTION I OF PROC ARTICLE II.* DoD Components must use the following standard wording in Section I of PROC Article II in accordance with § 1132.220 of this part:

*Section I. Bonding requirements.* If you award a construction or facility improvement contract under this award with a value in excess of the simplified acquisition threshold, you must comply with at least the minimum requirements for bidders' bid guarantees and contractors' performance and payment bonds described in 2 CFR 200.325(a) through (c), unless a provision in the award-specific terms and conditions of this award excepts you from the requirement based on our determination that your bonding policy and requirements are adequate to protect Federal interests.

**Appendix C to Part 1132—Terms and Conditions for PROC Article III, “Contract Provisions for Recipient Procurements”**

I. *SECTION A OF PROC ARTICLE III.* DoD Components must use the following standard wording in Section A of PROC Article III in accordance with § 1132.305 of this part:

**PROC Article III. Contract Provisions for Recipient Procurements. (December 2014)**

*Section A. Contract provisions for administrative requirements.*

1. *Remedies.* In any contract under this award for an amount in excess of the simplified acquisition threshold, you must provide for administrative, contractual, or legal remedies, including any appropriate sanctions and penalties, when the contractor violates or breaches the contract terms.

2. *Termination.* In any contract for an amount in excess of \$10,000, you must specify: Conditions under which you may terminate the contract for cause or convenience; the procedures for termination; and the basis to be used for settlement.

3. *Allowable costs under cost-type contracts.* In any cost-type contract with an entity, you must include a clause to permit the entity to charge to the contract only costs that are allowable under the cost principles that FMS Article III identifies as applicable to that type of entity, as supplemented by any award-specific terms and conditions related to allowability of costs that are included in this award. Your contract clause may permit the contractor to use its own cost principles in determining the allowability of its costs charged to the contract, as long as its cost principles comply with those Federal cost

principles supplemented by any award-specific terms and conditions of this award.

4. *Rights in copyright and data.* You must include in each contract under this award a provision requiring that the contractor:

- a. Grant the Government a royalty-free, nonexclusive and irrevocable right to:
  - i. Reproduce, publish, or otherwise use for Federal purposes any work that is subject to copyright and that the contractor develops, or acquires ownership of, under this award;
  - ii. Authorize others to reproduce, publish, or otherwise use such work for Federal purposes; and

- b. Grant the Government the right to:
  - i. Obtain, reproduce, publish, or otherwise use data produced under this award;
  - ii. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes; and

- c. Include the Government rights described in subparagraphs 4.a. and 4.b. of this section in any subcontracts.

5. *Access to records.*

a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for access to any of the contractor's books, documents, papers, and records that are directly pertinent to that contract, to enable and support audits, examinations, excerpts, and transcriptions. The contract provision must provide access to those records for all of the following and their duly authorized representatives:

- i. You;
- ii. Us as the Federal awarding agency, including our Inspector General; and
- iii. The Comptroller General of the United States.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in subpart F of 2 CFR part 200, you must provide for the access to audit documentation described in 2 CFR 200.517(b).

6. *Records retention.*

a. In any negotiated, cost-type or time and materials contract for an amount in excess of the simplified acquisition threshold, you must provide for retention of all records that are directly pertinent to that contract for three years after you make final payment and all pending matters are closed.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in subpart F of 2 CFR part 200, you must provide for the retention of audit documentation described in 2 CFR 200.517(a).

7. *Reporting.* In any contract awarded under this award, you must include any provision for the contractor's reporting to you that may be needed in order for you to meet your requirements under this award to report to us.

II. *SECTION B OF PROC ARTICLE III.* DoD Components must use the following standard wording in Section B of PROC Article III in accordance with § 1132.310 of this part:

*Section B. Contract provisions for national policy requirements.*

1. *Equal employment opportunity.* You must include the clause provided in 41 CFR

60–1.4(b) in any “federally assisted construction contract” (as defined in 41 CFR 60–1.3) under this award unless provisions of 41 CFR part 60–1 exempt the contract from the requirement.

2. *Wage Rate Requirements (Construction)*, formerly the Davis-Bacon Act. With respect to each construction contract for more than \$2,000 to be awarded using funding provided under this award, you must:

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

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

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

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

3. *Copeland Act prohibition on kickbacks*. In each contract under this award to construct, complete, or repair a building or work, you must:

a. Include a provision requiring the contractor to comply with the anti-kickback provisions of the Copeland Act (18 U.S.C. 874 and 40 U.S.C. 3145), as supplemented by Department of Labor regulations at 29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.”

b. Report all suspected or reported violations to the award administration office identified in the award notice cover sheet of this award.

4. *Contract Work Hours and Safety Standards Act for work involving mechanics or laborers*. In each contract for an amount greater than \$100,000 that involves the employment of mechanics or laborers and is not a type of contract excepted under 40 U.S.C. 3701, you must include the clauses specified in Department of Labor (DoL) regulations at 29 CFR 5.5(b) to require use of wage standards that comply with the Contract Work Hours and Safety Standards Act (40 CFR, Subtitle II, Part A, Chapter 37), as implemented by the DoL at 29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.”

5. *Patents and inventions*. If you procure the services of a nonprofit organization, small business firm, or other entity for the performance of experimental, developmental or research work, you must include in the contract the clause prescribed in Section B of PROP Article VI to establish contractual requirements regarding subject inventions resulting from the contract and provide for Government rights in those inventions.

6. *Clean air and water requirements*. You must:

a. In each contract for an amount greater than \$150,000 under this award, include a

clause requiring the contractor to comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401–7671q), Federal Water Pollution Control Act (33 U.S.C. 1251–1387), and standards, orders, or regulations issued under those acts; and

b. Report any violations of the Acts, standards, orders, or regulations to both the award administration office identified in this award and the appropriate regional office of the Environmental Protection Agency.

7. *Nonprocurement suspension and debarment*. Unless you have an alternate method for requiring the contractor’s compliance, you must include a clause in each contract for an amount equal to or greater than \$25,000 and in each contract for federally required audit services to require the contractor to comply with OMB guidance on nonprocurement suspension and debarment in 2 CFR part 180, as implemented by DoD regulations at 2 CFR part 1125.

8. *Byrd Amendment anti-lobbying requirements*. In each contract for an amount exceeding \$100,000, you must include a clause requiring the contractor to submit to you the certification and any disclosure forms regarding lobbying that are required under 31 U.S.C. 3152, as implemented by the DoD at 32 CFR part 28.

9. *Purchase of recovered materials by States or political subdivisions of States*. In each contract under which the contractor may purchase items designated in Environmental Protection Agency (EPA) regulations in 40 CFR part 247, subpart B, you must include a clause requiring the contractor to comply with applicable requirements in those EPA regulations, which implement Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962).

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

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

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

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

## PART 1134—FINANCIAL, PROGRAMMATIC, AND PROPERTY REPORTING: GENERAL AWARD TERMS AND CONDITIONS

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Appendix D to Part 1134—Terms and Conditions for REP Article IV, “Reporting on subawards and executive compensation”

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

**§ 1134.1 Purpose of this part.**

(a) This part specifies standard wording of general terms and conditions concerning recipients' reporting requirements.

(b) It thereby implements OMB guidance on reporting in 2 CFR part 170 and the following portions of 2 CFR part 200, as they relate to general terms and conditions:

- (1) 2 CFR 200.301 and 200.327 through 200.329; and
- (2) 2 CFR 200.300(b) as it relates to subaward reporting, 200.312(a) as it relates to inventories of federally owned property, and 200.343(a) as it relates to financial and performance reporting.

**§ 1134.2 Applicability of this part.**

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

**§ 1134.3 Exceptions from requirements of this part.**

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

**§ 1134.4 Organization of this part.**

- (a) The content of this part is organized into subparts and associated appendices.
- (1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through D to this part (with the associated direction to DoD Components in subparts A through D, respectively):

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award with- in REP Article . . .
Appendix A .....	Performance management, monitoring, and reporting .....	I.
Appendix B .....	Financial reporting .....	II.
Appendix C .....	Reporting on property .....	III.
Appendix D .....	Reporting on subawards and executive compensation .....	IV.

**Subpart A—Performance Management, Monitoring, and Reporting (REP Article I)**

**§ 1134.100 Purpose of REP Article I.**

REP Article I of the general terms and conditions specifies requirements related to recipient reporting on program performance. It thereby implements OMB guidance in:

- (a) 2 CFR 200.328; and
- (b) Portions of 2 CFR 200.301 and 200.343(a) that relate to performance reporting.

**§ 1134.105 Performance reporting for construction awards.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(c) notes that agencies rely heavily on onsite technical inspections and certified percentage of completion data to monitor progress under construction awards and states that agencies may require additional performance reports only when considered necessary.

(b) *DoD implementation.* DoD Components may require performance reports under construction awards only when necessary and, to reduce recipient burdens, should coordinate the performance reporting with financial reporting to the maximum extent practicable.

(c) *Award terms and conditions.* (1) If a DoD Component has general terms and conditions specifically for construction awards and does not need performance reports for those awards, it:

- (i) Should reserve Sections A through D of REP Article I in those terms and conditions;
- (ii) Must follow the specifications in §§ 1134.135 and 1134.145 to include the default wording appendix A to this part provides for Sections E and G of REP Article I in those terms and conditions, in order to require recipients to promptly report significant developments and reserve the DoD Component's right to make site visits.
- (iii) Must follow the specifications in § 1134.140 to insert wording in Section F of REP Article I in those terms and conditions, to tell recipients where and how to submit any reports of significant developments.

(2) If a DoD Component has general terms and conditions specifically for construction awards and determines that it needs performance reports for those awards:

- (i) It may tailor the template and content that appendix A to this part provides for Sections A through D of REP Article I in those terms and conditions, as needed to specify the reporting requirements or, as appropriate, instead integrate those requirements into REP Article II on financial reporting. The form, format, or data elements that the DoD Component specifies for any of those performance reports must comply with requirements of the Paperwork Reduction Act of 1995, as implemented by OMB at 5 CFR part 1320, to use OMB-approved information

collections if more than 9 recipients will be subject to the reporting requirement.

- (ii) It must follow the specifications in §§ 1134.135 through 1134.145 concerning Sections E through G of REP Article I in those terms and conditions, as described in paragraphs (c)(1)(ii) and (iii) of this section.

**§ 1134.110 When to require and when to waive performance reports for non-construction awards.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(f) states that an agency may waive any performance report that it does not need.

(b) *DoD implementation—(1) Interim reports.* DoD Components should waive requirements for interim performance reports under non-construction awards, including research awards, only when program managers have an alternative source for the information that the reports provide in support of the need for technical program oversight during the period of performance.

(2) *Final reports—(i) Research.* DoD Components may not waive requirements for final performance reports under research awards, even when program managers have other sources of the information they contain. A primary purpose of a final report under a research award is to document the overall project or program well enough to serve as a long-term reference from which others may understand the purpose, scope, approach, results or

outcomes, and conclusions or recommendations of the research.

(ii) *Non-construction programs other than research.* DoD Components should consider the long-term value of final performance reports for documenting program outcomes, as well as any near-term value, before waiving requirements for final reports under other non-construction awards.

(c) *Award terms and conditions.* Appendix A to this part provides a template for REP Article I of the general terms and conditions of research awards or other non-construction awards under which performance reports are required. A DoD Component must either use the default wording that appendix A provides or insert wording into the template, in accordance with §§ 1134.115 through 1134.145, to:

(1) Specify the content and form, format, or data elements recipients must use for interim and final performance reporting (see § 1134.115);

(2) Specify the reporting frequency, reporting periods, and due dates for interim performance reports (see § 1134.120);

(3) Specify the due dates and reporting periods for final performance reports (see § 1134.125);

(4) Specify that recipients may request extensions of due dates for performance reports (see § 1134.130);

(5) Require recipients to report significant developments (see § 1134.135);

(6) Specify reporting procedures (see § 1134.140); and

(7) Reserve the DoD Component's right to make site visits (see § 1134.145).

**§ 1134.115 Content and forms, formats, or data elements for interim and final performance reporting under non-construction awards.**

(a) *OMB guidance.* OMB guidance in: (1) 2 CFR 200.301 and 200.328(b)(2) state that Federal awarding agencies must require recipients to use standard OMB-approved information collections for reporting performance information.

(2) 2 CFR 200.328(b)(2)(i) through (iii) list types of information that performance reports under non-construction awards will contain, as appropriate, unless other collections are approved by OMB.

(b) *DoD implementation.* (1) The content of the information collections that a DoD Component's general terms and conditions specify for non-construction awards must include the elements listed in 2 CFR 200.328(b)(2)(i) through (iii) that are appropriate to the projects or programs subject to those general terms and conditions.

(2) Forms, formats, and data elements that a DoD Component's general terms

and conditions specify for performance reporting under non-construction awards must comply with requirements of the Paperwork Reduction Act of 1995 to use OMB-approved information collections, as implemented at 5 CFR part 1320.

(3) To the maximum extent practicable, a DoD Component's general terms and conditions for non-construction awards must specify that recipients use Governmentwide standard forms, formats, and data elements that also are used by other agencies for similar programs, recipients, and types of awards (e.g., the Research Performance Progress Report format or any successor to it that OMB clears for interim performance progress reports under research awards to institutions of higher education and nonprofit entities).

(c) *Award terms and conditions.* To implement the provisions of paragraphs (a) and (b) of this section, a DoD Component must insert wording in lieu of the reserved Section A of REP Article I of its general terms and conditions for non-construction awards to specify the form, format, or data elements that recipients must use for interim and final performance reports. Section A of REP Article I may specify a different requirement for final performance reports than interim reports.

**§ 1134.120 Frequency, reporting periods, and due dates for interim performance reporting under non-construction awards.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(b)(1) addresses performance reporting frequency and due dates.

(1) *Reporting frequency.* The OMB guidance states that interim performance reports should be no less frequent than annually, nor more frequent than quarterly except in unusual circumstances (e.g., when more frequent reporting is necessary for effective program monitoring).

(2) *Due dates.* The OMB guidance states that due dates for interim performance reports must be:

(i) 30 calendar days after the end of the reporting period if interim reports are required quarterly or semiannually; and

(ii) 90 calendar days after the end of the reporting period if interim reports are required annually, unless the agency elects to require the annual reports before the anniversary dates of multiyear awards.

(b) *DoD implementation.* DoD implements the OMB guidance in 2 CFR 200.328(b)(1) concerning frequency and due dates of interim performance reports through award terms and

conditions, with the following clarifications and added specifications concerning reporting periods:

(1) *Reporting frequency.* DoD Components rarely, if ever, should require recipients to submit interim performance reports more often than annually for basic research awards. Before requiring interim performance reports more frequently than annually for other research awards, DoD Components should carefully consider whether the benefits of more frequent reporting are sufficient to offset the potential for slowing the rate of research progress, due to diversion of researchers' time from research performance to report preparation.

(2) *Reporting periods.* For research awards, a DoD Component should not require any recipient to submit interim performance reports on a cumulative basis—i.e., the second and any subsequent performance report should address only the most recent reporting period and not also address previous reporting periods covered by earlier interim performance reports.

(3) *Due dates.* If a DoD Component requires an interim report more frequently than quarterly due to unusual circumstances, as described in 2 CFR 200.328(a)(1) and paragraph (a)(1) of this section, the DoD Component must specify that the due date for the report is 30 days after the end of the reporting period. For all other interim reports, DoD Components must specify due dates in accordance with paragraph (a)(2) of this section.

(c) *Award terms and conditions.* A DoD Component must insert wording in lieu of the reserved Section B of REP Article I of its general terms and conditions for non-construction awards to specify:

(1) The frequency with which recipients must submit interim performance reports;

(2) The reporting period each interim performance report must cover; and

(3) The due date for each interim performance report, stated as the number of calendar days after the end of the reporting period.

**§ 1134.125 Due dates and reporting periods for final performance reports under non-construction awards.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(b)(1) states that each final performance report will be due 90 calendar days after the end date of the period of performance. It also states that an agency may extend the due date if a recipient submits a justified request.

(b) *DoD implementation—(1) Due dates.* Consistent with 2 CFR 200.328(b)(1):

(i) *General.* A DoD Component's general terms and conditions must specify that the due date for each recipient's submission of its final performance report is 90 calendar days after the end of the period of performance.

(ii) *Exception.* A DoD Component may pre-approve a 30 day extension to the due date in its general conditions by specifying that each recipient's final performance report is due 120 calendar days after the end of the period of performance. Doing so would be especially helpful to recipients that have subawards and need time to assimilate subrecipient inputs into the final report for the project or program as a whole.

(2) *Reporting periods—(i) Non-construction programs other than research.* A DoD Component's general terms and conditions for non-construction programs other than research may require each recipient to submit a final report that is cumulative and covers the entire period of performance, as that may more effectively document the project or program for future reference.

(ii) *Research.* Final reports for research awards should be cumulative (*i.e.*, each final report should cover the entire period of performance under the award and not just the period since the previous interim performance report) because a primary purpose of a final report for a research award is to document the overall project or program, as described in § 1134.110(b)(2).

(c) *Award terms and conditions.* To implement the provisions of paragraphs (a) and (b) of this section, a DoD Component in its general terms and conditions for non-construction awards:

(1) Must either:

(i) Specify that the due date for final performance reports is 90 days after the end of the period of performance by including the default wording that appendix A to this part provides for paragraph C.1 of REP Article I; or

(ii) Pre-approve a 30-day extension to the due date, as described in paragraph (b)(1)(ii) of this section, by including a revision of the default wording for paragraph C.1 of REP Article I with "120 calendar days" inserted in lieu of "90 calendar days."

(2) Must insert wording in lieu of the reserved paragraph C.2 of REP Article I, to specify the reporting period for final reports (*i.e.*, whether the reports must be cumulative).

#### § 1134.130 Requesting extensions of due dates for performance reports.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(b)(1) states that, if a recipient submits a justified request for an extension in the due date for any interim or final performance report, an agency may extend the due date.

(b) *DoD implementation.* A DoD Component's general terms and conditions for non-construction awards must specify that a recipient may request an extension of the due date for interim or final performance reports. DoD Components should grant requests that provide adequate justification. For a DoD Component that pre-approves a 30-day extension of due dates for final performance reports in its general terms and conditions, as described in § 1134.125(b)(1)(ii) and (c)(1)(ii), any award-specific extensions would be beyond the pre-approved 30-day extension.

(c) *Award terms and conditions.* To implement the provisions of paragraphs (a) and (b) of this section, a DoD Component's general terms and conditions for non-construction awards must include the default wording that appendix A to this part provides for Section D of REP Article I on extensions of performance reporting due dates.

#### § 1134.135 Reporting significant developments.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(d) states that a recipient must promptly notify the awarding agency about significant developments.

(b) *DoD implementation.* A DoD Component's general terms and conditions must require recipients to report significant developments, as described in 2 CFR 200.328(d).

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the default wording that appendix A to this part provides for Section E of REP Article I on reporting of significant developments.

#### § 1134.140 Performance reporting procedures.

(a) *Requirement.* A DoD Component's general terms and conditions must inform recipients about performance reporting procedures.

(b) *Award terms and conditions.* (1) To implement the requirement of paragraph (a) of this section, a DoD Component in its general terms and conditions must insert wording in Section F of REP Article I (which is reserved in the template for REP Article I that appendix A to this part provides), to specify:

(i) The office or offices to which a recipient must submit its interim and

final performance reports, any requests in due dates for those reports, and any reports of significant developments; and

(ii) How the recipient is to submit those reports and requests (*e.g.*, email or electronic portal).

(2) For research awards, this wording must comply with the distribution and marking requirements of DoD Manual 3200.14, Volume 1. This includes the requirement that all significant scientific or technological findings, recommendations, and results derived from DoD endeavors—which shall include the final performance report at a minimum—are recorded and provided to Defense Technical Information Center (DTIC).

#### § 1134.145 Site visits.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.328(e) states that a Federal awarding agency may make site visits as warranted by program needs.

(b) *DoD implementation.* A DoD Component's general terms and conditions must state that the Government reserves the right to make site visits as warranted.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must include the default wording that appendix A to this part provides for Section G of REP Article I concerning site visits.

### Subpart B—Financial Reporting (REP Article II)

#### § 1134.200 Purpose of REP Article II.

REP Article II of the general terms and conditions specifies requirements related to financial reporting. It thereby implements OMB guidance in 2 CFR 200.327 and the portions of 2 CFR 200.301 and 200.343(a) that are specific to financial reporting.

#### § 1134.205 Reporting forms, formats, or data elements.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.327 states that Federal awarding agencies may require recipients to use only the standard OMB-approved Governmentwide data elements for collection of financial information, unless OMB approves other forms, formats, or data elements for financial information collection.

(b) *DoD implementation.* DoD Components must collect financial information from recipients using OMB-approved forms, formats, or data elements.

(1) Unless current approvals expire, approved financial information collections include the Governmentwide Federal Financial Report (SF-425) and Request for Advance or Reimbursement (SF-270). In

the future, they would include any additional information collections that OMB approves.

(2) For all but the recipient's final financial report after the end of the period of performance, a DoD Component may rely on financial information the recipient provides on the SF-270 or other OMB-approved payment request form, format, or data elements if that financial information is sufficient to meet the DoD Component's needs. For the final report, the DoD Component must require the recipient to use the SF-425 or other OMB-approved financial information collection.

(3) A DoD Component must obtain approval for any variations from OMB-approved forms or formats, including use of additional or substitute data elements or modification of the associated instructions for recipient entities submitting the information.

#### **§ 1134.210 Content of REP Article II.**

(a) *Requirement.* General terms and conditions for DoD grants and cooperative agreements must specify what financial information recipients are required to report and how often, when, where, and how they must report.

(b) *Award terms and conditions*—(1) *General.* Appendix B to this part provides a template into which a DoD Component must insert wording to specify the form, format, or data elements recipients must use for financial reporting; the frequency, reporting periods, and due dates for their financial reports (stated as the number of days after the end of the reporting period); and where and how they must submit the information.

(2) *Required reporting form, format, or data elements for interim and final financial reports.* In Section A of REP Article II, which is reserved in appendix B to this part, a DoD Component must insert wording to specify the OMB-approved form, format, or data elements that recipients must use for financial reporting and the Web site where they can be found. The section may provide a different requirement for final financial reports than interim reports during the period of performance if the DoD Component needs less information on interim reports than is needed on the final report.

(3) *Interim financial reports: frequency, reporting periods, and due dates.* In Section B of REP Article II, which is reserved in appendix B to this part, a DoD Component must insert wording to specify the frequency with which recipients must submit interim financial reports, as well as the reporting period each report must cover

and when it is due. Note that this section may waive interim reporting requirements if the DoD Component relies on information already provided with payment requests (e.g., on the SF-270).

(i) Consistent with OMB guidance in 2 CFR 200.327, the reporting frequency may be no less often than annually and no more frequently than quarterly except in unusual circumstances (e.g., a need for more frequent reporting for monitoring program performance, in which case financial reporting should be in coordination with performance reporting).

(ii) The reporting frequency, reporting periods, and due dates must conform with any guidance on those aspects of financial reporting in the OMB-approved instructions accompanying the form, format, or data elements used.

(iii) When a DoD Component's general terms and conditions provide for advance payments based on predetermined schedules—which is very rarely if ever appropriate for research awards—the terms and conditions should provide for at least quarterly reporting. This will enable post-award administrators to closely monitor recipients' balances of cash on hand for compliance with Governmentwide cash management standards.

(4) *Final financial report.* Appendix B to this part provides default wording for Section C of REP Article II to implement OMB guidance in 2 CFR 200.343(a) as it applies to final financial reports. Given that 2 CFR part 200 provides 90 days for subrecipients to liquidate subaward obligations and submit their final financial reports to recipients, the default wording in appendix B gives recipients 120 days to submit final financial reports to DoD post-award administration offices. That provides a reasonable amount of time for recipients to incorporate any information they need from final subaward reports. A DoD Component may alter the default wording or supplement it if it has a basis to do so in a statute or a regulation published in the Code of Federal Regulations.

(5) *Extensions of due dates.* A DoD Component's general terms and conditions must include the default wording for Section D of REP Article II that appendix B to this part provides to authorize recipients to request extensions of due dates for interim or final financial reports.

(6) *Where and how to submit financial reports.* In Section E of REP Article II, which is reserved in appendix B to this part, a DoD Component must insert wording to specify the DoD official or

office to whom a recipient must submit its interim and final financial reports and the method it must use to do so (e.g., email or other electronic submission method).

#### **Subpart C—Reporting on Property (REP Article III)**

##### **§ 1134.300 Purposes of REP Article III.**

REP Article III of the general terms and conditions provides a consolidated source that sets out required reports, notifications, requests, and accountings related to federally owned property and property that is acquired or improved under awards. The article is:

(a) The original source of requirements for recipients to:

(1) Submit periodic status reports and notifications of critical changes for real property (in paragraphs A.1 and A.2 of the article), which thereby implements OMB guidance in 2 CFR 200.329;

(2) Submit an annual inventory of federally owned property (in paragraph C.1 of the article), which thereby partially implements OMB guidance in 2 CFR 200.312(a);

(3) Provide information on request about copyrighted works and data produced under awards (in paragraph D.2 of the article).

(b) A secondary source provided for the convenience of recipients and DoD post-award administrators that lists and refers to the original sources of requirements for recipients to:

(1) Request disposition instructions and account at closeout for real property (in paragraphs A.3 and A.4 of the article), the original sources of which are in PROP Article III and OAR Article VI;

(2) Provide notifications of loss, damage, or theft and requests for disposition instructions for equipment (in paragraphs B.2 and B.3 of the article), the original sources of which are in PROP Articles II and IV, respectively;

(3) Account at closeout for equipment and supplies (in paragraph B.4 of the article), the original sources of which are in OAR Article VI and PROP Article IV;

(4) Provide notifications of loss, damage, or theft and requests for disposition instructions for federally owned property (in paragraphs C.2 and C.3 of the article), the original sources of which are in PROP Articles II and V, respectively;

(5) Disclose and report on inventions developed under awards (in paragraph D.1), the original source of which is in PROP Article VI; and

(6) Request disposition instructions for intangible property acquired, but not



developed or produced, under awards (in paragraph D.3 of the article), the original source of which is in PROP Article VI.

**§ 1134.305 Real property: reports, notifications, requests, and accounting.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify the real property reporting requirements described in § 1134.300(a)(1) and provide references to the related requirements described in § 1134.300(b)(1).

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, the wording of Section A of REP Article III of a DoD Component's general terms and conditions must comply with either paragraph (b)(1) or (b)(2) of this section.

(1) *General.* Unless a DoD Component determines that there will be no acquisition or improvement of real property under awards using its general terms and conditions, those general terms and conditions must include the default wording appendix C to this part provides for Section A of REP Article III, to which the DoD Component:

(i) Must add wording in lieu of the reserved paragraph A.1.a to specify how often a recipient must submit periodic status reports and how long it is required to do so (which should be the duration of the Federal interest in the real property). The wording of paragraph A.1.a must be consistent with OMB guidance in 2 CFR 200.329, which provides different options for reporting frequency depending on the duration of the Federal interest in the real property.

(ii) Must add wording in lieu of the reserved paragraph A.1.b to specify the due date for each periodic status report in terms of the number of calendar days after the end of the period covered by the report (e.g., a report on the status of the property as of September 30 might be due 30 calendar days after that date).

(iii) May provide wording in lieu of the reserved paragraph A.1.c if there are other instructions—e.g., a form, format, or information elements that a recipient must use (which must be cleared by OMB under the Paperwork Reduction Act) or a particular office to which reports must be submitted, especially if reporting will continue beyond closeout of awards under which the real property was acquired or improved.

(2) *Exception.* A DoD Component may reserve Section A of REP Article III if it determines that there will be no acquisition or improvement of real property under awards using its general terms and conditions.

**§ 1134.310 Equipment and supplies: Reports, notifications, requests, and accounting.**

(a) *Requirement.* REP Article III of a DoD Component's general terms and conditions must clarify that there is no requirement for routine periodic reporting about equipment and provide the references described in § 1134.300(b)(2) and (3) to requirements in other articles for notifications, requests, and accounting related to equipment and supplies.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for Section B of REP Article III.

**§ 1134.315 Federally owned property: Inventory, notifications, and requests.**

(a) *Requirement.* REP Article III of a DoD Component's general terms and conditions must specify the reporting requirement described in § 1134.300(a)(2) and provide the references described in § 1134.300(b)(4) to requirements in other articles for notifications and requests related to federally owned property.

(b) *Policy.* (1) Except as provided by statute or in regulations adopted in the Code of Federal Regulations after opportunity for public comment, a DoD Component may not specify:

(i) Due dates for the annual inventories of federally owned property; or

(ii) Forms, formats, or specific data elements for the inventories, notifications, or requests for disposition instructions. Note that any form, format, or data elements that a DoD Component specifies must be cleared by OMB under the Paperwork Reduction Act.

(2) Not specifying due dates, forms, formats, or data elements provides flexibility for recipients and DoD post-award administrators to handle these requirements in ways that reduce burdens and costs. For example, a recipient may arrange with a post-award administration office to submit one consolidated inventory annually for federally owned property under all of the awards it receives that are administered by that office, using a format its property management system already generates.

(c) *Award terms and conditions—(1) General.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for Section C of REP Article III. The DoD Component may add wording

on due dates or on forms, formats, or data elements only as provided in paragraph (b) of this section.

(2) *Exception.* A DoD Component may reserve Section C of REP Article III if it determines that no recipients of awards using its general terms and conditions, or subrecipients of subawards under those awards, will be accountable for federally owned property under those awards or subawards.

**§ 1134.320 Intangible property: Disclosures, reports, and requests.**

(a) *Requirement.* REP Article III of a DoD Component's general terms and conditions must specify the requirement described in § 1134.300(a)(3) and provide the references described in § 1134.300(b)(5) and (6) to requirements in other articles for disclosures, reports, and requests related to intangible property.

(b) *Award terms and conditions—(1) General.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for Section D of REP Article III.

(2) *Exceptions.* A DoD Component may reserve:

(i) Section D of REP Article III if it determines that no recipients of awards using its general terms and conditions, or subrecipients of subawards under those awards, will have any intangible property for which they will be accountable to the Federal Government; or

(ii) Any of paragraphs D.1 through D.3, if it determines that no recipients of awards using its general terms and conditions, or subrecipients of subawards under those awards, will be accountable to the Federal Government for the particular types of intangible property addressed by those paragraphs.

**Subpart D—Reporting on Subawards and Executive Compensation (REP Article IV)**

**§ 1134.400 Purpose of REP Article IV.**

REP Article IV of the general terms and conditions specifies requirements for recipients to report information about subawards and executive compensation.

**§ 1134.405 Content of REP Article IV.**

(a) *Source of the reporting requirements.* The requirements for recipients to report information about subawards and executive compensation originate in the Federal Funding Accountability and Transparency Act of 2006, as amended (31 U.S.C. 6101 note). OMB guidance at 2 CFR part 170 implements those statutory

requirements and appendix A to that part provides standard Governmentwide wording of an award provision.

(b) *Award terms and conditions.* To implement the reporting requirements described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the default wording appendix E to this part provides as REP Article IV.

#### **Appendix A to Part 1134—Terms and Conditions for REP Article I, “Performance Management, Monitoring, and Reporting”**

DoD Components must use the following template for REP Article I, using default wording or inserting wording in lieu of reserved sections or paragraphs in accordance with §§ 1134.105 through 1134.145 of this part:

##### **REP Article I. Performance Management, Monitoring, and Reporting. (December 2014)**

*Section A. Required reporting form, format, or data elements for interim and final performance reports.* [Reserved.]

*Section B. Frequency, reporting periods, and due dates for interim performance reports.* [Reserved.]

*Section C. Due date and reporting period for final performance report.*

1. *Due date.* You must submit the final performance report under this award no later than 90 calendar days after the end date of the period of performance unless we approve an extension of that due date as described in Section D of this article.

2. *Reporting period.* [Reserved.]

*Section D. Extensions of due dates.* You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request and we will approve extensions that are adequately justified.

*Section E. Reporting significant developments.* You must report the following information to us as soon as you become aware of it:

1. Problems, delays, or adverse conditions that will materially impair your ability to meet the objectives of this award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

2. Favorable developments which will enable you to meet schedules and objectives sooner or at less cost than anticipated or produce more or different beneficial results than originally planned.

*Section F. Performance reporting procedures.* [Reserved.]

*Section G. Site visits.* We reserve the right to make site visits as warranted to monitor program performance under this award.

#### **Appendix B to Part 1134—Terms and Conditions for REP Article II, “Financial Reporting”**

DoD Components must use the following template for REP Article II, inserting wording in each of sections A, B, and D and adjusting the default wording of Section E, if needed, in accordance with § 1134.210 of this part:

##### **REP Article II. Financial Reporting. (December 2014)**

*Section A. Required reporting form, format, or data elements for interim and final financial reports.* [Reserved.]

*Section B. Interim financial reports: Frequency, reporting periods, and due dates.* [Reserved.]

*Section C. Final financial report.* You must submit the final financial report under this award no later than 120 calendar days after the end date of the period of performance.

*Section D. Extensions of due dates.* You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request, and we will approve extensions that are adequately justified.

*Section E. Where and how to submit financial reports.* [Reserved.]

#### **Appendix C to Part 1134—Terms and Conditions for REP Article III, “Reporting On Property”**

DoD Components must use the following template for REP Article III in accordance with §§ 1134.305 through 1134.320 of this part:

##### **REP Article III. Reporting on Property. (December 2014)**

*Section A. Real property.* Paragraphs A.1 through A.4 apply to real property for which you are accountable under this award, for as long as there is a Federal interest in the property (whether that interest is due to you or a subrecipient having acquired or improved the property under this award, or a transfer of the accountability for the property to this award from another award).

1. *Periodic status reports.* You must submit periodic status reports, as follows:

a. *Frequency and duration of reporting requirement.* [Reserved.]

b. *Due dates.* [Reserved.]

c. *Other submission instructions.* [Reserved.]

2. *Notifications of critical changes.* You must notify the award administration office of any critical change in the status of real property as soon as feasible after you become aware of it. A critical change is any event with a significant adverse impact on the condition or value of the property, such as damage due to fire; flood, hurricane, or other severe weather; earthquake; or accident.

3. *Requests for disposition instructions.* You must comply with applicable requirements in PROP Article III to request disposition instructions, either during the period of performance or at closeout.

4. *Closeout accounting.* You must account to the award administration office for real property at the time of closeout of the award, as required by Section D of OAR Article VI.

*Section B. Equipment and supplies.* Paragraphs B.1 through B.4 apply to equipment or supplies for which you are accountable under this award and in which there is a Federal interest (whether that interest is due to you or a subrecipient having acquired or improved the property under this award, or a transfer of the accountability for the property to this award from another award).

1. *Periodic status report.* There is no requirement for periodic reporting during the period of performance.

2. *Notifications of loss, damage, or theft.* You must comply with applicable requirements in PROP Article II governing your property management system to promptly notify the award administration office of any loss, damage, or theft of equipment.

3. *Requests for disposition instructions.* You must comply with applicable requirements in PROP Article IV to request disposition instructions for equipment, either during the period of performance or at closeout.

4. *Closeout accounting.*

a. *Equipment.* You must account to the award administration office for equipment at the time of closeout of this award, as required by Section D of OAR Article VI.

b. *Supplies.* If you have a residual inventory of unused supplies that meets the criteria specified in paragraph E.2 of PROP Article IV, you must as part of your closeout accounting arrange with the award administration office for the compensation that paragraph specifies for the Federal interest in the supplies.

*Section C. Federally owned property.* Paragraphs C.1 through C.3 apply to federally owned property for which you are accountable under this award.

1. *Annual inventory.* You must submit annually to the award administration office an inventory of federally owned property.

2. *Notifications of loss, damage, or theft.* As provided in PROP Article II governing your property management system, you must promptly notify the award administration office of any loss, damage, or theft of federally owned property.

3. *Requests for disposition instructions.* You must comply with requirements in Section B of PROP Article V to request disposition instructions, either during the period of performance or at closeout.

4. *Closeout accounting.* Your requests for disposition instructions for federally owned property, as described in paragraph C.3 of this section, satisfy the need to account for federally owned property at closeout (see Section D of OAR Article VI).

*Section D. Intangible property.* Paragraphs D.1 through D.3 apply to intangible property for which you are accountable under this award.

1. *Inventions developed under the award.* You must submit all reports on subject inventions developed under this award that are required by the modified Governmentwide patent rights award provision specified in Section B of PROP Article VI, which include a disclosure of each subject invention and a final report listing all such subject inventions.

2. *Copyrights and data.* You are not required to submit periodic reports about data produced under the award or about works for which you acquired ownership under this award, either by development or otherwise, and in which copyright was asserted. However, because the Federal Government has the rights in the works and data that Sections A and C of PROP Article VI specify, you must provide information about the works and data if we request it.

3. *Intangible property acquired, but not developed or produced, under the award.* You must comply with requirements in Section D of PROP Article VI to request disposition instructions for intangible property acquired, but not developed or produced, under the award.

**Appendix D to Part 1134—Terms and Conditions for REP Article IV, “Reporting on Subawards and Executive Compensation”**

DoD Components must use as REP Article IV the following default wording in accordance § 1134.405 of this part:

**REP Article IV. Reporting on Subawards and Executive Compensation. (December 2014)**

You must report information about subawards and executive compensation as specified in the award provision in appendix A to 2 CFR part 170, “Reporting subaward and executive compensation information,” modified as follows:

1. To accommodate any future designation of a different Governmentwide Web site for reporting subaward information, the Web site “<http://www.fsr.gov>” cited in paragraphs a.2.i. and a.3 of the award provision is replaced by the phrase “<http://www.fsr.gov> or successor OMB-designated Web site for reporting subaward information”;

2. To accommodate any future designation of a different Governmentwide Web site for reporting executive compensation information, the Web site “<http://www.sam.gov>” cited in paragraph b.2.i. of the award provision is replaced by the phrase “<https://www.sam.gov> or successor OMB-designated Web site for reporting information on total compensation”; and

3. The reference to “Sec. \_\_.210 of the attachment to OMB Circular A-133, ‘Audits of States, Local Governments, and Non-Profit Organizations’” in paragraph e.3.ii of the award provision is replaced by “2 CFR 200.330, as implemented in SUB Article I of this award”.

**PART 1136—OTHER ADMINISTRATIVE REQUIREMENTS: GENERAL AWARD TERMS AND CONDITIONS**

Sec.

1136.1 Purpose of this part.

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**Subpart A—Submitting and Maintaining Recipient Information (OAR Article I)**

1136.100 Purpose of OAR Article I.

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**Subpart B—Records Retention and Access (OAR Article II)**

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1136.500 Purpose of OAR Article V.

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1136.600 Purpose of OAR Article VI.

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1136.700 Purpose of OAR Article VII.

1136.705 Content of OAR Article VII.

Appendix A to Part 1136—Terms and Conditions for OAR Article I, “Submitting and maintaining recipient information”

Appendix B to Part 1136—Terms and Conditions for OAR Article II, “Records retention and access”

Appendix C to Part 1136—Terms and Conditions for OAR Article III, “Remedies and termination”

Appendix D to Part 1136—Terms and Conditions for OAR Article IV, “Claims, disputes, and appeals”

Appendix E to Part 1136—Terms and Conditions for OAR Article V, “Collection of amounts due”

Appendix F to Part 1136—Terms and Conditions for OAR Article VI, “Closeout”

Appendix G to Part 1136—Terms and Conditions for OAR Article VII, “Post-closeout adjustments and continuing responsibilities”

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

**§ 1136.1 Purpose of this part.**

(a) This part specifies standard wording of general terms and conditions

concerning submission and maintenance of recipient information; records retention and access; remedies for noncompliance and termination; claims, disputes, and appeals; collection of amounts due; closeout; and after-the-award requirements.

(b) It thereby implements OMB guidance in multiple portions of 2 CFR part 200, as those portions apply to general terms and conditions. Specifically, this part implements:

(1) 2 CFR 200.113 and

200.210(b)(1)(iii);

(2) 2 CFR 200.300(b) as it refers to requirements in 2 CFR part 25; and

(3) 2 CFR 200.333 through 200.345.

**§ 1136.2 Applicability of this part.**

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

**§ 1136.3 Exceptions from requirements of this part.**

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

**§ 1136.4 Organization of this part.**

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart. That direction may permit DoD Components to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through G to this part (with the associated direction to DoD Components in subparts A through G, respectively):

In . . .	You will find terms and conditions specifying recipients’ rights and responsibilities related to . . .	That would appear in an award with-in OAR Article . . .
Appendix A	Submitting and maintaining recipient information	I.
Appendix B	Records retention and access	II.
Appendix C	Remedies and termination	III.
Appendix D	Claims, disputes, and appeals	IV.
Appendix E	Collection of amounts due	V.
Appendix F	Closeout	VI.

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award with-in OAR Article . . .
Appendix G .....	Post-closeout adjustments and continuing responsibilities .....	VII.

### Subpart A—Submitting and Maintaining Recipient Information (OAR Article I)

#### § 1136.100 Purpose of OAR Article I.

OAR Article I sets forth requirements for recipients to maintain current information about themselves in the data system the Government specifies as the repository for standard information about its business partners, currently the System for Award Management. The article thereby implements OMB guidance in:

(a) 2 CFR 200.113 and 200.210(b)(1)(iii);

(b) 2 CFR part 25; and

(c) The portion of 2 CFR 200.300(b) that cites 2 CFR part 25 and the System for Award Management).

#### § 1136.105 Content of OAR Article I.

To implement the requirement described in § 1136.100, DoD Components' general terms and conditions must use the standard wording appendix A to this part provides as OAR Article I. A DoD Component may reserve Section B of the article in its general terms and conditions if it is certain that there will be no award using those general terms and conditions for which the Federal share of the award's total value will exceed \$500,000.

### Subpart B—Records Retention and Access (OAR Article II)

#### § 1136.200 Purpose of OAR Article II.

OAR Article II addresses rights and responsibilities concerning retention of records related to awards; access to recipients' records; and collection, transmission, and storage of information. The article thereby implements OMB guidance in 2 CFR 200.333 through 200.337.

#### § 1136.205 Records retention period.

(a) *OMB guidance.* OMB guidance in: (1) The lead-in paragraph of 2 CFR 200.333 sets a standard retention period that is generally applicable to recipient records pertinent to Federal awards.

(2) 2 CFR 200.333(c) and (f) provide different standard retention periods specifically for records that are related either to real property and equipment acquired with Federal funds or to indirect cost rate proposals and cost allocation plans.

(b) *DoD implementation.* A DoD Component's general terms and

conditions must specify the standard retention periods described in paragraph (a) of this section.

(c) *Award terms and conditions—(1) General.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section A of OAR Article II.

(2) *Exception.* A DoD Component's general terms and conditions may substitute alternative wording for paragraph A.3 of OAR Article II if the awards using those terms and conditions will be renewed quarterly or annually. The alternative wording for awards that will be renewed quarterly or annually would replace the words "final financial report" in paragraph A.3 with "quarterly financial report" or "annual financial report," respectively.

#### § 1136.210 Extensions of retention period due to litigation, claim, or audit.

(a) *OMB guidance.* OMB guidance in: (1) 2 CFR 200.333(a) provides for an extended retention period for records involved in a litigation, claim, or audit that begins before the end of the standard 3-year retention period.

(2) 2 CFR 200.333(b) provides that a recipient also is required to extend the retention period when a Federal awarding, cognizant, or oversight agency notifies it in writing to do so.

(b) *DoD implementation.* (1) A DoD Component's general terms and conditions must provide for extended retention periods for records involved in a litigation, claim, or audit that begins before the end of the standard 3-year retention period, as described in 2 CFR 200.333(a).

(2)(i) With the one exception described in paragraph (b)(2)(ii) of this section, DoD Components may not require recipients to extend the records retention period as described in 2 CFR 200.333(b).

(ii) A DoD Component's general terms and conditions must extend the "retention period," as that term is used in 2 CFR 200.344(a), to include the entire period during which recipients retain their records, even if that period extends beyond the standard 3-year retention period described in § 1136.205. That extension will enable disallowance of costs and recovery of funds based on an audit or other review of records a recipient elected to retain beyond the standard retention period, even if the audit or review began after

the end of that retention period. Without that extension, the ability to disallow costs and recover funds would be limited by 2 CFR 200.344(a), which states that an agency must make any disallowance determination about a recipient's costs and notify the recipient within the record retention period.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section B of OAR Article II.

#### § 1136.215 Records for program income earned after the end of the performance period.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.333(e) provides the retention period for records related to program income earned after the end of the period of performance, for instances when an agency establishes requirements governing the disposition of program income earned after that time.

(b) *DoD implementation.* A DoD Component's general terms and conditions should not establish retention requirements for records related to program income earned after the end of the period of performance. Retention requirements for those records in general terms and conditions would be inconsistent with the statement in 2 CFR 1128.725 that a DoD Component should rarely, if ever, establish a requirement for a recipient to be accountable for program income earned after the end of the period of performance. Section 1128.725 provides for use of general terms and conditions wording in FMS Article VII that establishes no such requirement. Section 1128.725 further states that exceptions for individual awards are properly addressed at the time of award in the award-specific terms and conditions.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section C of OAR Article II. If a DoD Component includes a requirement in the award-specific terms and conditions of a particular award for the recipient to be accountable for program income earned after the end of the period of performance, it also may include a requirement in the award-specific terms and conditions for the recipient's retention of the associated records.

**§ 1136.220 Records for joint or long-term use.**

(a) *OMB guidance.* OMB guidance in:

(1) 2 CFR 200.334 states that a Federal awarding agency must request that a recipient transfer records to its custody if the agency determines that the records have value that warrants long-term retention. It also provides that the agency may instead arrange for the recipient to retain records that are continuously needed for joint use.

(2) 2 CFR 200.333(d) exempts records transferred to a Federal agency from the standard records retention requirement.

(b) *DoD implementation.* A DoD Component's general terms and conditions must inform recipients that they may be asked to transfer records, maintain them for joint use, or retain them for a longer period of time.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section D of OAR Article II.

**§ 1136.225 Methods for collecting, transmitting, and storing information.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.335 addresses the use of electronic and paper formats in the collection, transmission, and storage of information related to awards.

(b) *DoD implementation.* A DoD Component's general terms and conditions must include provisions consistent with the guidance in 2 CFR 200.335 for recipients' use of electronic and paper formats to collect, transmit, and store information.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section E of OAR Article II.

**§ 1136.230 Access to records.**

(a) *OMB guidance.* OMB guidance in 2 CFR 200.336 and 200.337 addresses Federal Government and public access to recipient records related to awards.

(b) *DoD implementation.* A DoD Component's general terms and conditions must provide for Government access to records consistent with 2 CFR 200.336 and address public access to records to implement the guidance in 2 CFR 200.337.

(c) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for Section F of OAR Article II.

**Subpart C—Remedies and Termination (OAR Article III)****§ 1136.300 Purpose of OAR Article III.**

OAR Article III addresses remedies for noncompliance, including suspension and termination of awards. It thereby implements OMB guidance in 2 CFR 200.338 through 200.340 and 200.342.

**§ 1136.305 Content of OAR Article III.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify remedies available for addressing noncompliance with award terms and conditions, policies and procedures related to termination of awards, and effects of suspension and termination on allowability of costs.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix C to this part provides for OAR Article III.

**Subpart D—Claims, Disputes, and Appeals (OAR Article IV)****§ 1136.400 Purpose of OAR Article IV.**

OAR Article IV addresses claims, disputes, and appeals under awards. It thereby provides the award terms and conditions required by the DoD Grant and Agreement Regulations at 32 CFR 22.815 and also implements OMB guidance in 2 CFR 200.341.

**§ 1136.405 Content of OAR Article IV.**

(a) *Requirement.* The DoD Grant and Agreement Regulations at 32 CFR 22.815 require DoD Components' general terms and conditions to incorporate the procedures set forth in that section for processing claims and disputes and deciding appeals of grants officer's decisions.

(b) *Award terms and conditions—(1) General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix D to this part provides for OAR Article IV, with wording inserted in lieu of the reserved paragraph A.2 to identify the Component's cognizant Grant Appeal Authority and provide his or her mailing or email address.

(2) *Exception.* A DoD Component may add one or more sections to the wording appendix D to this part provides for OAR Article IV to state a requirement that recipients must provide opportunities to subrecipients for hearings, appeals, or other administrative proceedings with respect to claims, disputes, remedies for noncompliance, or other matters if:

(i) That requirement is in a statute or regulation adopted in the Code of Federal Regulations after opportunity for public comment; and

(ii) The statutory or regulatory requirement applies to awards using the DoD Component's general terms and conditions.

**Subpart E—Collection of Amounts Due (OAR Article V)****§ 1136.500 Purpose of OAR Article V.**

OAR Article V addresses procedures for establishing, appealing, and collecting debts under DoD awards. It thereby:

(a) Provides requirements for recipients paralleling those for DoD Components in the DoDGARs at 32 CFR 22.820;

(b) Augments requirements of OAR Article IV in any case in which a claim leads to a determination that a recipient owes an amount to DoD; and

(c) Implements OMB guidance in 2 CFR 200.345.

**§ 1136.505 Content of OAR Article V.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify how grants officers' decisions establish debts under awards, when debts become delinquent, how and when recipients may appeal, and how debts not paid in a timely manner are referred for debt collection.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix E to this part provides for OAR Article V.

**Subpart F—Closeout (OAR Article VI)****§ 1136.600 Purpose of OAR Article VI.**

OAR Article VI addresses recipients' responsibilities for closeout of awards and subawards under them. The article thereby implements OMB guidance in 2 CFR 200.343.

**§ 1136.605 Content of OAR Article VI.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify requirements related to closeout of awards and subawards, including recipients' liquidations of obligations, refunds of unobligated balances, and submission of final reports.

(b) *Award terms and conditions—(1) General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix F to this part provides for OAR Article VI.

(2) *Exception related to due dates for final reports other than performance, financial, and invention reports.*

Consistent with OMB guidance in 2 CFR 200.343(a), a DoD Component may grant extensions to due dates for final reports.

(i) To pre-approve a 30-day extension for final reports other than performance, financial, and invention reports, a DoD Component may substitute “120 calendar days” for “90 calendar days” in the default wording appendix F to this part provides for paragraph C.4 of OAR Article VI. These pre-approved 30-day extensions in the general terms and conditions are for all awards using those terms and conditions; they therefore are separate and distinct from any additional extensions a recipient may later request for an individual award.

(ii) The parallel authorities for pre-approved extensions of due dates for final performance, financial, and invention reports are elsewhere.

DoDGRAs provisions in:

(A) 2 CFR 1134.125 authorize a DoD Component to pre-approve a 30-day extension for due dates of performance reports by an appropriate substitution of wording in REP Article I of the general terms and conditions.

(B) 2 CFR 1134.210 provide default wording in REP Article II that pre-approves a 30-day extension for due dates of financial reports.

(C) 2 CFR 1130.610 authorize a DoD Component to pre-approve a 30-day extension for due dates of final reports listing subject inventions under awards by an appropriate substitution of wording in PROP Article VI of the general terms and conditions.

### Subpart G—Post-Closeout Adjustments and Continuing Responsibilities (OAR Article VII)

#### § 1136.700 Purpose of OAR Article VII.

OAR Article VII addresses post-closeout funding adjustments and recipients' continuing responsibilities after award closeout. It thereby implements OMB guidance in 2 CFR 200.344.

#### § 1136.705 Content of OAR Article VII.

(a) *Requirement.* A DoD Component's general terms and conditions must specify the rights and responsibilities of the Government and recipients with respect to funding adjustments and recipients' continuing responsibilities after award closeout.

(b) *Award terms and conditions.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix G to this part provides for OAR Article VII.

### Appendix A to Part 1136—Terms and Conditions for OAR Article I, “Submitting and Maintaining Recipient Information”

DoD Components must use as OAR Article I the following standard wording in accordance with § 1136.105 of this part:

#### OAR Article I. Submitting and Maintaining Recipient Information. (December 2014)

##### Section A. System for award management.

1. Unless you are exempted from this requirement in accordance with OMB guidance in 2 CFR 25.110, you must maintain the currency of information about yourself in the system the Federal Government specifies as the repository for information about its business partners (currently the System for Award Management (SAM)).

2. You must maintain the information in that system until you submit the final financial report required under this award or receive the final payment, whichever is later.

3. You must review and update the information at least annually after your initial registration in the system (unless you are subject to the requirements in Section B) and more frequently if required by changes in your information.

##### Section B. Reporting of performance and integrity information.

1. *General reporting requirement.* If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal agencies exceeds \$10,000,000 for any period of time during the period of performance of this award, then during that period of time you must maintain in SAM the currency of information required by paragraph B.2 of this section. Note that:

a. This reporting is required under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313).

b. As required by section 3010 of Public Law 111–212, all performance and integrity information posted in the designated information system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

c. Recipient information is submitted to the OMB-designated integrity and performance system through the SAM, as described in paragraph B.3 of this section. The currently designated integrity and performance information system is the Federal Awardee Performance and Integrity Information System (FAPIS).

2. *Proceedings about which you must report.* Submit the information that the designated information system requires about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent 5 year period; and

c. Is one of the following:

i. A criminal proceeding that resulted in a conviction, as defined in paragraph B.5. of this section;

ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

iii. An administrative proceeding, as defined in paragraph B.5. of this section, that resulted in a finding of fault and liability and your payment of either monetary fine or penalty of \$5,000 or more or a reimbursement, restitution, or damages in excess of \$100,000; or

iv. Any other criminal, civil, or administrative proceeding if:

A. It could have led to an outcome described in paragraph B.2.c.i, ii, or iii of this section;

B. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

C. The requirement in this section to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. *Reporting procedures.* Submit the information required in paragraph B.2 of this section to the Entity Management functional area of the SAM.

a. Current procedures are to submit the information as part of the maintenance of your information in the SAM that Section A of this article requires.

b. You do not need to submit the information again under this award if you already reported current information to the SAM under another Federal grant, cooperative agreement, or procurement contract.

4. *Reporting frequency.* During any period of time when you are subject to the requirement in paragraph B.1 of this section, you must report to SAM at least semiannually following your initial report of any information required in paragraph B.2 of this section, either to provide new information not reported previously or affirm that there is no new information to report.

5. *Definitions.* For purposes of this section:

a. *Administrative proceeding* means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract, grant, or cooperative agreement. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. *Total value of currently active grants, cooperative agreements, and procurement contracts* includes:

i. Only the Federal share of the funding under any Federal agency award with a recipient cost share or match; and

ii. The value of all expected funding increments and options, even if not yet exercised, under each Federal agency award.

##### Section C. Disclosure of evidence of integrity-related issues.

1. *Disclosure requirement.* At any time during the period of performance of this

award, if you have evidence that a covered person committed a covered action (see paragraphs C.2 and C.3 of this section) that may affect this award, you must disclose the evidence in writing to the Office of the Inspector General, DoD, with a copy to the grants officer identified in the award cover pages.

2. *Covered person.* As the term is used in this section, “covered person” means a principal, employee, or agent of either you or a subrecipient under this award, where:

a. “Principal” means:

i. An officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities that relate to this award; or

ii. A consultant or other person, whether or not employed by you or a subrecipient or paid with funds under this award, who:

A. Is in a position to handle funds under this award;

B. Is in a position to influence or control the use of those funds; or

C. Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the project or program under this award.

b. “Agent” means any individual who acts on behalf of, or who is authorized to commit you or the subrecipient, whether or not employed by you or the subrecipient.

3. *Covered action.* As the term is used in this section, “covered action” means a violation of Federal criminal law in Title 18 of the United States Code involving fraud, bribery, or a gratuity violation.

4. *Safeguarding of the information.*

a. To the extent permitted by law and regulation, we will:

i. Safeguard and treat information you disclose to us as confidential if you mark the information as “confidential” or “proprietary.”

ii. Not release the information to the public in response to a Freedom of Information Act (5 U.S.C. 552) request without notifying you in advance.

b. We may transfer documents you provide to us to any other department or agency within the Executive Branch of the Federal Government if the information relates to matters within that organization’s jurisdiction.

## Appendix B to Part 1136—Terms and Conditions for OAR Article II, “Records Retention And Access”

DoD Components must use the following standard wording in OAR Article II in accordance with §§ 1136.205 through 1136.230 of this part, which allow alternative wording in paragraph A.3:

### OAR Article II. Records Retention and Access. (December 2014)

#### Section A. Records retention period.

Except as provided in Sections B through D of this article:

1. You must keep records related to any real property and equipment acquired, in whole or in part, using Federal funds under the award for 3 years after final disposition of the property. For any item of exempt

property with a current fair market value greater than \$5,000, and for which final disposition was not a condition of the title vesting, you must keep whatever records you need for as long as necessary to ensure that you can deduct the Federal share if you later use the property in contributions for cost sharing or matching purposes under any Federal award.

2. You must keep records related to rate proposals for indirect or facilities and administration costs, cost allocation plans, and supporting records such as indirect cost rate computations and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback or composite fringe benefit rates) as follows:

a. If you are required to submit a proposal, plan, or other computations to your Federal cognizant agency for indirect costs, as the basis for negotiation of a rate, you must keep the submissions and all supporting records for 3 years from the date on which you were required to make the submissions.

b. If you are not required to submit a proposal, plan, or other computation as the basis for negotiation, you must keep the proposal, plan, other computation, and supporting records for 3 years from the end of the fiscal year or other accounting period covered by the proposal, plan, or other computation.

3. You must keep other financial records, supporting documents, statistical records, and other records pertinent to this award for a period of 3 years from the date you submit your final financial report under the award.

#### Section B. Extensions of retention period due to litigation, claim, or audit.

1. If any litigation, claim, or audit begins before the end of the 3-year retention period specified in Section A of this article and the final action related to the litigation, claim, or audit is not taken before the end of that 3-year period, you must retain all records related to this award that may be involved in the litigation, claim, or audit until all findings involving the records have been resolved and final action taken.

2. We may disallow costs and recover funds under this award based on an audit or other review of records you elected to retain beyond the retention period required by this article, even if the audit or review begins after the end of the 3-year retention period specified in Section A of this article. Thus, the “retention period,” as that term is used in OMB guidance in 2 CFR 200.344(a)(1), is extended as described in 2 CFR 200.333(b) to include the entire period during which we and our authorized representatives continue to have access to those records under paragraph F.2 of this article.

Section C. *Records for program income earned after the end of the performance period.* In accordance with Section F of FMS Article VII, there are no requirements under this award applicable to program income you earn after the end of the period of performance and therefore no associated records retention requirements.

#### Section D. Records for joint or long-term use.

1. *Joint use.* To avoid duplicate recordkeeping for records that you and we

both need to use on a continuous basis, we may ask you to make special arrangements with us, by mutual agreement, to make records available for joint and continuous use.

2. *Long-term use.* If we determine that some records will be needed longer than the 3-year period specified in Section A of this article, we may request that you either:

a. Retain the records for a longer period of time; or

b. Transfer the records to our custody for long-term retention.

3. *Retention requirements for transferred records.* For any records transferred to our custody, you are not subject to the records retention requirements in Section A of this article.

#### Section E. Methods for collecting, transmitting, and storing information.

1. You should, whenever practicable, collect, transmit, and store information related to this award in open and machine readable formats rather than in closed formats or on paper. However, if you request it, we will:

a. Provide award related-information to you on paper; and

b. Accept award related-information from you on paper. In that case, we will not require more than an original and two copies.

2. When your original records are in an electronic form that cannot be altered, you do not need to create and retain paper copies of those records.

3. When your original records are on paper, you may substitute electronic versions produced through duplication or using other forms of electronic media, provided that:

a. You conduct periodic quality control reviews of the records;

b. You provide reasonable safeguards against alteration of the records; and

c. The records remain readable.

#### Section F. Access to records.

##### 1. Scope of Government access rights.

a. We as the awarding agency, the Federal Government Inspectors General, the Comptroller General of the United States, and any of our authorized representatives have the right of access to any documents, papers, or other records you have that are pertinent to this award, in order to make audits, examinations, excerpts, and transcripts.

b. This right also includes timely and reasonable access to your personnel for the purposes of interview and discussion related to the records.

c. As described in OMB guidance at 2 CFR 200.336(b), the access to records described in this section will include access to the true name of a victim of a crime only under extraordinary and rare circumstances.

i. You are required to provide that access only in response to a court order or subpoena pursuant to a bona fide confidential investigation, or in response to a request duly authorized by the head of the DoD Component or his or her designee; and

ii. You must take appropriate steps to protect this sensitive information.

##### 2. Duration of Government access rights.

We have the access rights described in paragraph F.1 of this section as long as you retain the records.

##### 3. Public access.

a. You must comply with requirements to protect information that Federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export controlled information), to include both information generated under this award and information provided to you and identified as being subject to protection. Other than those limitations on dissemination of information, we place no restrictions on you that limit public access to your records pertinent to this award.

b. We do not place any requirements on you to permit public access to your records separate from any Federal, State, local, or tribal statute that may require you to do so.

c. The Freedom of Information Act (FOIA, 5 U.S.C. 552) does not apply to records in your possession but records you provide to us generally will be subject to FOIA, with the applicable exemptions.

### Appendix C to Part 1136—Terms and Conditions for OAR Article III, “Remedies and Termination”

DoD Components must use the following standard wording in OAR Article III in accordance with § 1136.305 of this part:

#### OAR Article III. Remedies and Termination. (December 2014)

##### Section A. Remedies for noncompliance.

1. If you materially fail to comply with a term or condition of this award or an applicable Federal statute or regulation, we may amend this award to impose specific additional conditions as described in OMB guidance in 2 CFR 200.207. If we determine that the imposition of those additional conditions is insufficient to remedy the noncompliance, we may take one or more of the following actions that we deem appropriate to the circumstances:

a. Temporarily withhold cash payments pending:

- i. Your correction of the deficiency; or
- ii. Our taking more severe enforcement action.

b. Disallow (that is, deny both use of funds and any applicable cost-sharing or matching credit for) all or part of the cost of the activity or action not in compliance;

c. Suspend or terminate this award, in whole or in part (suspension of an award is a separate and distinct action from suspension of a person under 2 CFR parts 180 and 1125, as noted in paragraph A.3 of this article);

d. Withhold further awards to you for the project or program that is not in compliance;

e. Take any other action legally available to us under the circumstances.

2. You may raise an objection to our taking any remedy we take under paragraph A.1 of this section and will be given an opportunity to provide information and documentation challenging the action. The procedures are those specified in OAR Article IV for claims and disputes.

3. Our use of any remedy under paragraph A.1 of this section, including suspension or termination of the award, does not preclude our referring the noncompliance to a suspension and debarment official and asking that official to consider initiating a

suspension or debarment action under 2 CFR part 1125, the DoD implementation of OMB guidance at 2 CFR part 180.

##### Section B. Termination.

1. This award may be terminated in whole or in part as follows:

a. *Unilaterally by the Government.* We will provide a notice of termination if we unilaterally terminate this award in whole or in part, which we may do for either of the following reasons:

i. Your material failure to comply with the award terms and conditions. If we terminate the award for that reason, we will report the termination to the OMB-designated integrity and performance system (currently FAPIIS). In accordance with 41 U.S.C. 2313, each Federal awarding official must review and consider the information in the OMB-designated integrity and performance system with regard to any proposal or offer before awarding a grant or contract.

ii. The program office does not have funding for an upcoming increment if this award is incrementally funded. In that case, the Government’s financial obligation does not exceed the amount currently obligated under the award.

b. *By mutual agreement.* With your consent, we may terminate this award, in whole or in part, for any reason. In that case, you and we must agree to:

i. The termination conditions, including the effective date; and

ii. In the case of a partial termination, the portion to be terminated.

c. *Unilaterally by the recipient.* You may unilaterally terminate this award, in whole or in part, by sending us written notification that states:

i. The reasons for the termination;

ii. The effective date; and

iii. In the case of partial termination, the portion to be terminated. In that case, however, we may terminate the award in its entirety if we determine that the remaining portion of the award will not accomplish the purposes for which we made the award.

2. If this award is terminated in its entirety before the end of the performance period, you must complete the closeout actions for which you are responsible under OAR Article VI. The due date for each action is to be measured relative to the date of termination.

3. If this award is only partially terminated before the end of the performance period, with a reduced or modified portion of the award continuing through the end of the performance period, then closeout actions will occur at the end of the performance period as specified in OAR Article VI.

4. You will continue to have all of the post-closeout responsibilities that OAR Article VII specifies for you if this award is wholly or partially terminated before the end of the performance period.

*Section C. Effects of suspension or termination of the award on allowability of costs.* If we suspend or terminate this award prior to the end of the period of performance, costs resulting from obligations that you incurred:

1. Before the effective date of the suspension or termination are allowable if:

a. You properly incurred those obligations;

b. You did not incur the obligations in anticipation of the suspension or termination;

c. In the case of termination, the costs resulted from obligations that were noncancellable after the termination; and

d. The costs would have been allowable if we had not suspended or terminated the award and it had expired normally at the end of the period of performance.

2. During the suspension or after the termination are not allowable unless we expressly authorize them, either in the notice of suspension or termination or subsequently.

### Appendix D to Part 1136—Terms and Conditions for OAR Article IV, “Claims, Disputes, and Appeals”

DoD Components must use the following standard wording in OAR Article IV in accordance with § 1136.405 of this part:

#### OAR Article IV. Claims, Disputes, and Appeals. (December 2014)

##### Section A. Definitions.

1. *Claim.* The definition of the term “claim,” as it is used in this article, is in the definitions section of the preamble to these general terms and conditions.

2. *Grant Appeal Authority.* [Reserved.]

##### Section B. Submission of claims.

1. *Your claims.* To submit a claim arising out of this award, you must submit it in writing to the grants officer for decision, specify the nature and basis for the relief you are requesting, and include all data that supports your claim.

2. *Government claims.* You will receive a written grants officer’s decision if a DoD claim arises out of this award.

##### Section C. Alternative dispute resolution.

1. We encourage resolution of all issues related to this award by mutual agreement between you and the grants officer.

2. If you and the grants officer are unable to resolve an issue through unassisted negotiations, we encourage use of Alternative Dispute Resolution (ADR) procedures to try to do so. ADR procedures are any voluntary means, such as mini-trials or mediation, used to resolve issues in controversy. ADR procedures may be used prior to submission of a claim or at any other time prior to the Grant Appeal Authority’s decision on any appeal you submit.

*Section D. Grants officer decisions for claims you submit.*

1. Within 60 calendar days of receiving your claim, the grants officer will either:

a. Transmit a written decision that:

- i. Identifies data on which the decision is based; and

- ii. Identifies and provides the mailing address for the Grant Appeal Authority to whom you would submit an appeal of the decision if you elect to do so; or

b. If more time is required to render a written decision, notify you of a specific date when he or she will render the decision and inform you of the reason for delaying it.

2. The grants officer’s decision will be final unless you decide to appeal, in which case we encourage use of ADR procedures as noted in Section C of this article.



*Section E. Formal administrative appeals.*

1. *Right to appeal.* You have the right to appeal a grants officer's decision to the Grant Appeal Authority identified in Section A of this article.

2. *Notice of appeal.* You may appeal a grants officer's decision within 90 calendar days of receiving the decision by submitting a written notice of appeal to the Grant Appeal Authority and grants officer. If you elect to use ADR procedures, you are allowed an additional 60 calendar days to submit the written notice of appeal.

3. *Appeal file.* Within 30 calendar days of the grants officer's receipt of your notice of appeal, you should receive the appeal file with copies of all documents relevant to the appeal. You may supplement the file with other documents you deem relevant and with a memorandum in support of your position for the Grant Appeal Authority's consideration. The Grant Appeal Authority may request additional information from you.

4. *Decision.* Unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal, the appeal will be decided solely on the basis of the written record. Any fact-finding or hearing will be conducted using procedures that the Grant Appeal Authority deems appropriate.

*Section F. Representation.* You may be represented by counsel or any other designated representative in any claim, appeal, or ADR proceeding, as long as the representative is not otherwise prohibited by law or regulation from appearing before the DoD Component concerned.

*Section G. Non-exclusivity of remedies.* Nothing in this article is intended to limit your right to any remedy under the law.

**Appendix E to Part 1136—Terms and Conditions for OAR Article V, “Collection Of Amounts Due”**

DoD Components must use the following standard wording in OAR Article V in accordance with § 1136.505 of this part:

**OAR Article V. Collection of Amounts Due. (December 2014)**

*Section A. Establishing a debt.*

1. Any amount paid to you in excess of the amount to which you are determined to be entitled under the terms and conditions of this award constitutes a debt to the Federal Government.

2. A grants officer will attempt to resolve any claim of your indebtedness arising out of this award by mutual agreement.

3. If the grants officer fails to resolve the claim in that manner, you will receive a written notice of the grants officer's decision formally determining the debt, as described in paragraph B.2 of OAR Article IV. The notice will describe the debt, including the amount, name and address of the official who determined the debt, and a copy of that official's determination.

*Section B. Debt delinquency and appeals.*

1. Within 30 calendar days of the grants officer's decision, you must either pay the amount owed to the address provided in the written notice or inform the grants officer that you intend to appeal the decision.

Appeal procedures are described in OAR Article IV.

2. If you elect not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.

3. If you elect to appeal the grants officer's decision, you will have 90 calendar days after receipt of the grants officer's decision to file your appeal unless Alternative Dispute Resolution (ADR) procedures are used, as described in section C of OAR Article IV, in which case you will have 150 calendar days.

*Section C. Demand letter, interest, and debt collection.*

1. If within 30 calendar days of the grants officer's decision, you neither pay the amount due nor provide notice of your intent to appeal the grants officer's decision, the grants officer will send you a demand letter identifying a payment office that will be responsible for any further debt collection activity.

2. If you do not pay by the due date specified in the written demand letter, the Federal Government may collect part or all of the debt by:

a. Making an administrative offset against your requests for reimbursements under Federal awards;

b. Withholding advance payments otherwise due to you; and

c. Any other action permitted by Federal statute.

3. The debt will bear interest, and may include penalties and other administrative costs, in accordance with applicable provisions of the DoD Financial Management Regulation (DoD 7000.14-R), which implements the Federal Claims Collection Standards. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

**Appendix F to Part 1136—Terms and Conditions for OAR Article VI, “Closeout”**

DoD Components must use the following standard wording in OAR Article VI in accordance with § 1136.605 of this part:

**OAR Article VI. Closeout. (December 2014)**

*Section A. Liquidation of obligations.*

Unless the award administration office authorizes an extension of the due date, you must liquidate all obligations that you incurred under this award not later than 120 calendar days after the end date of the period of performance.

*Section B. Refunds of unobligated balances.* You must promptly refund to the award administration office any balances of unobligated cash that we have advanced or paid to you and not authorized you to use on other projects or programs.

*Section C. Final reports.* You must submit the:

1. Final performance report under this award no later than the date specified in Section C of REP Article I, subject to any extensions granted under Section D of that article;

2. Final financial report under this award no later than the date specified in Section C of REP Article II, subject to any extensions granted under Section D of that article;

3. Final report listing subject inventions made under the award no later than the date specified in Section B of PROP Article VI; and

4. Other final reports that are required under this award no later than 90 calendar days after the end date of the period of performance, unless you request an extension of the due date and the award administration office approves the request.

*Section D. Accounting for property.* You must account for any real property, equipment, supplies, and intangible property that you and any subrecipients acquired or improved under the award, in accordance with PROP Articles I through IV and VI. Your requests for disposition instructions for any federally owned property, as required by PROP Article V, meet the need described in OMB guidance at 2 CFR 200.343(f) to account for that property at closeout.

**Appendix G to Part 1136—Terms and Conditions for OAR Article VII, “Post-Closeout Adjustments and Continuing Responsibilities”**

DoD Components must use the following standard wording in OAR Article VII in accordance with § 1136.705 of this part:

**OAR Article VII. Post-Closeout Adjustments and Continuing Responsibilities. (December 2014)**

*Section A. Adjustments.* The closeout of this award does not affect:

1. Our right to disallow costs and recover funds on the basis of a later audit or other review, as long as we make the determination that the costs are disallowed and notify you about that determination within the extended records retention period specified in paragraph B.2 of OAR Article II of these terms and conditions.

2. Your obligation to return any funds due to the Federal Government as a result of later refunds, corrections, or other transactions (to include any adjustments in final indirect cost rates).

*Section B. Continuing responsibilities.*

After closeout of this award, you must continue to comply with terms and conditions of this award that have applicability beyond closeout, including requirements concerning:

1. Audits, as specified in FMS Article V that cover periods of time during which you expended funds under this award.

2. Management, use, and disposition of any real property or equipment acquired under this award in which we continue to have a Federal interest after closeout, as specified in PROP Articles I through IV.

3. Retention of, and access to, records related to this award, as specified in OAR Article II.

**PART 1138—REQUIREMENTS RELATED TO SUBAWARDS: GENERAL AWARD TERMS AND CONDITIONS**

Sec.

1138.1 Purpose of this part.

1138.2 Applicability of this part.

- 1138.3 Exceptions from requirements of this part.
- 1138.4 Organization of this part.
- 1138.5 Authority to omit or reserve portions of SUB Articles I through XII.

**Subpart A—Distinguishing Subawards and Procurements (SUB Article I)**

- 1138.100 Purpose of SUB Article I.
- 1138.105 Content of SUB Article I.

**Subpart B—Pre-Award and Time of Award Responsibilities (SUB Article II)**

- 1138.200 Purpose of SUB Article II.
- 1138.205 Content of SUB Article II.

**Subpart C—Informational Content of Subawards (SUB Article III)**

- 1138.300 Purpose of SUB Article III.
- 1138.305 Content of SUB Article III.

**Subpart D—Financial and Program Management Requirements for Subawards (SUB Article IV)**

- 1138.400 Purpose of SUB Article IV.
- 1138.405 Content of SUB Article IV.

**Subpart E—Property Requirements for Subawards (SUB Article V)**

- 1138.500 Purposes of SUB Article V in relation to other articles.
- 1138.505 Title to property under subawards.
- 1138.510 Property management system requirements for subawards.
- 1138.515 Use and disposition of real property, equipment, supplies, and federally owned property under subawards.
- 1138.520 Intangible property under subawards.

**Subpart F—Procurement Procedures to Include in Subawards (SUB Article VI)**

- 1138.600 Purpose of SUB Article VI.
- 1138.605 Content of SUB Article VI.

**Subpart G—Financial, Programmatic, and Property Reporting Requirements for Subawards (SUB Article VII)**

- 1138.700 Purposes of SUB Article VII in relation to other articles.
- 1138.705 Performance reporting requirements for subawards.
- 1138.710 Financial reporting requirements for subawards.
- 1138.715 Reporting on property under subawards.

**Subpart H—Other Administrative Requirements for Subawards (SUB Article VIII)**

- 1138.800 Purpose of SUB Article VIII.
- 1138.805 Content of SUB Article VIII.

**Subpart I—National Policy Requirements for Subawards (SUB Article IX)**

- 1138.900 Purpose of SUB Article IX.
- 1138.905 Content of SUB Article IX.

**Subpart J—Subrecipient Monitoring and Other Post-Award Administration (SUB Article X)**

- 1138.1000 Purpose of SUB Article X.
- 1138.1005 Content of SUB Article X.

**Subpart K—Requirements Concerning Subrecipients' Lower-Tier Subawards (SUB Article XI)**

- 1138.1100 Purpose of SUB Article XI.
- 1138.1105 Content of SUB Article XI.

**Subpart L—Fixed-Amount Subawards (SUB Article XII)**

- 1138.1200 Purpose of SUB Article XII.
- 1138.1205 Content of SUB Article XII.
- Appendix A to Part 1138—Terms and Conditions for SUB Article I, “Distinguishing subawards and procurements”
- Appendix B to Part 1138—Terms and Conditions for SUB Article II, “Pre-award and time of award responsibilities”
- Appendix C to Part 1138—Terms and Conditions for SUB Article III, “Informational content of subawards”
- Appendix D to Part 1138—Terms and Conditions for SUB Article IV, “Financial and program management requirements for subawards”
- Appendix E to Part 1138—Terms and Conditions for SUB Article V, “Property requirements for subawards”
- Appendix F to Part 1138—Terms and Conditions for SUB Article VI, “Procurement procedures to include in subawards”
- Appendix G to Part 1138—Terms and Conditions for SUB Article VII, “Financial, programmatic, and property reporting requirements for subawards”
- Appendix H to Part 1138—Terms and Conditions for SUB Article VIII, “Other administrative requirements for subawards”
- Appendix I to Part 1138—Terms and Conditions for SUB Article IX, “National policy requirements for subawards”
- Appendix J to Part 1138—Terms and Conditions for SUB Article X, “Subrecipient monitoring and other post-award administration”
- Appendix K to Part 1138—Terms and Conditions for SUB Article XI, “Requirements concerning subrecipients' lower-tier subawards”
- Appendix L to Part 1138—Terms and Conditions for SUB Article XII, “Fixed-amount subawards”

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

**§ 1138.1 Purpose of this part.**

(a) This part specifies standard wording of general terms and conditions concerning recipients' award and administration of subawards under DoD grants and cooperative agreements.

(b) It thereby implements OMB guidance in subparts A through F of 2 CFR part 200 and 2 CFR parts 25, 170, and 180, as they apply to subawards.

**§ 1138.2 Applicability of this part.**

The types of awards and entities to which this part and other parts in this subchapter apply are described in the subchapter overview at 2 CFR 1126.2.

**§ 1138.3 Exceptions from requirements of this part.**

Exceptions are permitted from the administrative requirements in this part only as described at 2 CFR 1126.3.

**§ 1138.4 Organization of this part.**

(a) The content of this part is organized into subparts and associated appendices.

(1) Each subpart provides direction to DoD Components on how to construct one article of general terms and conditions for grants and cooperative agreements.

(2) For each subpart, there is a corresponding appendix with standard wording for terms and conditions of the article addressed by the subpart. Terms and conditions address rights and responsibilities of the Government and recipients.

(b) A DoD Component must use the wording provided in each appendix in accordance with the direction in the corresponding subpart and the authorization in § 1138.5, which permit a DoD Component to vary from the standard wording in some situations.

(c) The following table shows which article of general terms and conditions may be found in each of appendices A through L to this part (with the associated direction to DoD Components in subparts A through L, respectively, as supplemented by the authorization in § 1138.5):

In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award with-in SUB Article . . .
Appendix A	Distinguishing subawards and procurements	I.
Appendix B	Pre-award and time of award responsibilities	II.
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In . . .	You will find terms and conditions specifying recipients' rights and responsibilities related to . . .	That would appear in an award with-in SUB Article . . .
Appendix H .....	Other administrative requirements for subawards .....	VIII.
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**§ 1138.5 Authority to omit or reserve portions of SUB Articles I through XII.**

A DoD Component's general terms and conditions may:

(a) Omit SUB Articles II through XII that are the subject of this part if the DoD Component does not allow recipients to make subawards under awards using those terms and conditions. The DoD Component also may amend SUB Article I in that case, to state the prohibition on making subawards and limit the recipient's responsibility to ensuring that any transaction it awards at the next tier is a procurement transaction.

(b) Reserve portions of SUB Articles I through XII that do not apply to the DoD Component's awards using those terms and conditions. For example, the DoD Component may reserve paragraphs in SUB Articles IV through IX specifying administrative requirements that flow down solely to subawards to States if it determines that there is no possibility of a subaward to a State under any of the awards using its general terms and conditions. Similarly, it may reserve SUB Article XII if it does not permit any fixed-amount subawards under its awards.

**Subpart A—Distinguishing Subawards and Procurements (SUB Article I)**

**§ 1138.100 Purpose of SUB Article I.**

SUB Article I specifies requirements for a recipient to determine whether each transaction it makes at the next tier below a DoD grant or cooperative agreement is a subaward or a procurement transaction. It thereby implements OMB guidance in 2 CFR 200.201(a) and 200.330.

**§ 1138.105 Content of SUB Article I.**

(a) *Requirement.* A DoD Component's general terms and conditions must:

(1) Require the recipient to determine the nature of transactions it makes under its award; and

(2) Inform the recipient about the effect of that determination on the procedures for awarding the transaction and the transaction's terms and conditions.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording

appendix A to this part provides for SUB Article I.

**Subpart B—Pre-Award and Time of Award Responsibilities (SUB Article II)**

**§ 1138.200 Purpose of SUB Article II.**

SUB Article II specifies requirements concerning subrecipients' unique entity identifiers and pre-award risk assessments. It also references requirements in REP Article IV to report on subawards and subrecipients' executive compensation. It thereby partially implements OMB guidance in:

- (a) 2 CFR parts 25 and 170;
- (b) 2 CFR 200.207; 200.300(b), as it applies to subaward reporting; and 200.331(b); and
- (c) Subpart C of 2 CFR part 180, as implemented by DoD at 2 CFR part 1125.

**§ 1138.205 Content of SUB Article II.**

(a) *Requirement.* A DoD Component's general terms and conditions must require the recipient to:

- (1) Obtain an entity's unique entity identifier before making a subaward to the entity;
- (2) Notify potential subrecipients in advance about that requirement; and
- (3) Conduct a pre-award risk assessment of an entity before making a subaward to the entity and adjust subaward terms and conditions if warranted by the results of the assessment.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix B to this part provides for SUB Article II.

**Subpart C—Informational Content of Subawards (SUB Article III)**

**§ 1138.300 Purpose of SUB Article III.**

SUB Article III specifies information that recipients must include in subawards they make under DoD grants and cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.331(a)(1).

**§ 1138.305 Content of SUB Article III.**

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include certain information items in each subaward they make.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix C to this part provides for SUB Article III.

**Subpart D—Financial and Program Management Requirements for Subawards (SUB Article IV)**

**§ 1138.400 Purpose of SUB Article IV.**

SUB Article IV specifies the financial and program management requirements that recipients must include in subawards they make under DoD grants and cooperative agreements. It thereby implements OMB guidance in the following portions of 2 CFR part 200, as they apply to subawards:

- (a) Sections 200.209 and 200.302 through 200.309; and
- (b) Subparts E and F.

**§ 1138.405 Content of SUB Article IV.**

(a) *Requirement.* A DoD Component's general terms and conditions must require recipients to include pertinent requirements concerning financial and program management in each subaward they make.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix D to this part provides for SUB Article IV.

**Subpart E—Property Requirements for Subawards (SUB Article V)**

**§ 1138.500 Purposes of SUB Article V in relation to other articles.**

(a) *Purposes.* SUB Article V specifies requirements concerning equipment, supplies, and real, intangible, and federally owned property that recipients must include in subawards they make under DoD grants and cooperative agreements. It thereby:

(1) Specifies which of the requirements in PROP Articles I through VI of the award flow down to subawards; and

(2) Implements OMB guidance in 2 CFR 200.310 through 200.316, as those sections apply to subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix E to this part provides as Section A of SUB Article V to inform

recipients about the relationship between requirements for the recipient in PROP Articles I through VI and requirements for subawards in SUB Article V.

**§ 1138.505 Title to property under subawards.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify requirements related to title to property under subawards.

(b) *Award terms and conditions*—(1) *General.* A DoD Component's general terms and conditions must use the default wording appendix E to this part provides as Section B of SUB Article V to specify the requirements concerning title to property that recipients must include in their subawards.

(2) *Exception.* If a DoD Component has the necessary statutory authority to do so and includes provisions in paragraph A.2 of PROP Article I to identify any property acquired under the award as exempt property, as described in 2 CFR 1130.105, the DoD Component may at its option insert wording in paragraph B.1.b of SUB Article V to allow recipients to pass through those provisions to subrecipients.

(i) It is critical, however, that the DoD Component ensures that the wording of paragraph B.1.b is consistent with the statutory authority.

(ii) For example, if the statutory authority is 31 U.S.C. 6306—as described in 2 CFR 1130.105(b)(2)(i)—the wording of paragraph B.1.b of SUB Article V may permit a recipient to flow down the substance of the exempt property provision in paragraph A.2 of PROP Article I only to a subrecipient that is a nonprofit institution of higher education or nonprofit organization whose primary purpose is conducting scientific research.

**§ 1138.510 Property management system requirements for subawards.**

(a) *Requirement.* DoD Components' general terms and conditions must address the standards for property management systems that apply to subawards.

(b) *Award terms and conditions.* To specify the property management system standards that recipients must include in their subawards, a DoD Component's general terms and conditions must use the default wording appendix E to this part provides as Section C of SUB Article V.

**§ 1138.515 Use and disposition of real property, equipment, supplies, and federally owned property under subawards.**

(a) *Requirement.* A DoD Component's general terms and conditions must

specify the requirements concerning use and disposition of real property, equipment, supplies, and federally owned property that recipients must include in subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix E to this part provides for Sections D through F of SUB Article V.

**§ 1138.520 Intangible property under subawards.**

(a) *Requirement.* A DoD Component's general terms and conditions must address the provisions concerning intangible property that recipients must include in subawards.

(b) *Award terms and conditions*—(1) *General.* To specify the intangible property provisions that recipients must include in their subawards, a DoD Component's general terms and conditions must use the default wording appendix E to this part provides as Section G of SUB Article V.

(2) *Exception.* A DoD Component's general terms and conditions may delete the reference to “Section B of PROP Article VI” in the default wording appendix E to this part provides for paragraph G.2 of SUB Article V and provide alternative wording if:

(i) Those general terms and conditions will be used in awards for purposes other than research or education, as described in 2 CFR 1130.610(c)(3); and

(ii) The DoD Component wants to specify that nonprofit and governmental recipients include either:

(A) No provisions concerning inventions in subawards to for-profit entities; or

(B) Provisions in subawards to for-profit entities that differ from those the DoD Component's general terms and conditions specify for nonprofit and governmental recipients.

**Subpart F—Procurement Procedures To Include in Subawards (SUB Article VI)**

**§ 1138.600 Purpose of SUB Article VI.**

SUB Article VI of the general terms and conditions specifies procurement provisions recipients must include in their subaward terms and conditions. It thereby:

(a) Specifies which of the requirements in PROC Articles I through III of the award flow down to subawards; and

(b) Implements OMB guidance in 2 CFR 200.317 through 200.326 and appendix II to 2 CFR part 200, as those portions of 2 CFR part 200 apply to subawards; and

(c) Partially implements OMB guidance in 2 CFR 200.205(d), 200.213,

and 200.517, as those sections of 2 CFR part 200 apply to subawards.

**§ 1138.605 Content of SUB Article VI.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify that recipients' subawards include requirements for subrecipients' procurement procedures.

(b) *Award terms and conditions.* To specify the requirements for procurement procedures that a recipient must include in its subawards, a DoD Component's general terms and conditions must use the wording appendix F to this part provides for SUB Article VI.

**Subpart G—Financial, Programmatic, and Property Reporting Requirements for Subawards (SUB Article VII)**

**§ 1138.700 Purposes of SUB Article VII in relation to other articles.**

(a) *Purposes.* SUB Article VII of the general terms and conditions specifies provisions concerning reporting that recipients must include in their subaward terms and conditions, as applicable. It thereby implements OMB guidance in the following sections of 2 CFR part 200, as they apply to subawards:

(1) 2 CFR 200.301 and 200.327 through 200.329; and

(2) 2 CFR 200.315(c), as it relates to invention reporting; and

(3) 2 CFR 200.343(a), as it relates to financial and performance reporting.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix G to this part provides as Section A of SUB Article VII to inform recipients about the relationship between requirements for the recipient in REP Articles I through III and requirements for subawards in SUB Article VII.

**§ 1138.705 Performance reporting requirements for subawards.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify performance reporting requirements for subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the default wording appendix G to this part provides as Section B of SUB Article VII to specify the performance reporting requirements that recipients must include in their subawards.

**§ 1138.710 Financial reporting requirements for subawards.**

(a) *Requirement.* A DoD Component's general terms and conditions must

specify financial reporting requirements for subawards.

(b) *Award terms and conditions.* appendix G to this part provides default wording for Section C of SUB Article VII to specify the financial reporting requirements that recipients must include in their subawards.

**§ 1138.715 Reporting on property under subawards.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify the requirements for reporting on property that recipients must include in their subawards.

(b) *Award terms and conditions.* To implement the requirement described in paragraph (a) of this section, a DoD Component's general terms and conditions must use the wording appendix G to this part provides as Section D of SUB Article VII.

**Subpart H—Other Administrative Requirements for Subawards (SUB Article VIII)**

**§ 1138.800 Purpose of SUB Article VIII.**

SUB Article VIII of the general terms and conditions:

(a) Specifies provisions that a recipient must include in its subaward terms and conditions concerning submission and maintenance of subrecipient information; records retention and access; remedies and termination; disputes, hearings, and appeals; collection of amounts due; closeout; and post-closeout adjustments and continuing responsibilities.

(b) It thereby implements OMB guidance in 2 CFR 200.113 and 200.333 through 200.345, as those sections apply to subawards.

**§ 1138.805 Content of SUB Article VIII.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify the administrative requirements that a recipient must include in its subaward terms and conditions in areas covered by OAR Articles I through VII of the recipient's prime award.

(b) *Award terms and conditions—(1) General.* To implement the requirement in paragraph (a) of this section, a DoD Component's general terms and conditions must use the default wording appendix H to this part provides for SUB Article VIII.

(2) *Exception.* A DoD Component's general terms and conditions may add one or more sections to the default wording that appendix H to this part provides for SUB Article VIII if the DoD Component added requirements to OAR Article IV of its general terms and conditions, in accordance with paragraph 2 CFR 1136.405(b)(2),

because a statute or regulation requires recipients to provide opportunities to subrecipients for hearings, appeals, or other administrative proceedings with respect to claims, disputes, remedies for noncompliance, or other matters. The additional wording in SUB Article VIII would address the flow down to subrecipients of the added requirements in OAR Article IV.

**Subpart I—National Policy Requirements for Subawards (SUB Article IX)**

**§ 1138.900 Purpose of SUB Article IX.**

SUB Article IX addresses national policy requirements that recipients must include in their subaward terms and conditions. It thereby partially implements OMB guidance in 2 CFR 200.331(a)(2).

**§ 1138.905 Content of SUB Article IX.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify which of the national policy requirements in NP Articles I through IV of the award flow down to subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions:

(1) Must use the wording appendix B to this part provides for SUB Article IX if the DoD Component did not add, delete, or otherwise modify any of the wording that appendices A through D of 2 CFR part 1122 provided for NP Articles I through IV of the award (as permitted in accordance with DoDGARs provisions at 2 CFR 1122.115 and 1122.120).

(2) May make corresponding alterations to the wording appendix I to this part provides for SUB Article IX if the DoD Component did modify the wording of NP Articles I through IV, in order to conform the national policy requirements in SUB Article IX to the requirements in those modified articles.

**Subpart J—Subrecipient Monitoring and Other Post-Award Administration (SUB Article X)**

**§ 1138.1000 Purpose of SUB Article X.**

SUB Article X specifies the requirements for recipients' monitoring of subrecipients and related post-award administration of subawards they make under DoD grants and cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.331(d) through (h) and 2 CFR 200.340(a).

**§ 1138.1005 Content of SUB Article X.**

(a) *Requirement.* A DoD Component's general terms and conditions must specify requirements for recipients' monitoring of subrecipients and related

post-award administration of subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix J to this part provides for SUB Article X of its general terms and conditions.

**Subpart K—Requirements Concerning Subrecipients' Lower-Tier Subawards (SUB Article XI)**

**§ 1138.1100 Purpose of SUB Article XI.**

SUB Article XI specifies requirements that a recipient must include in any subaward under which it judges that the subrecipient may make lower-tier subawards. It thereby implements OMB guidance in 2 CFR 200.331(a) through (c) and other portions of 2 CFR part 200 as they apply to lower-tier subawards.

**§ 1138.1105 Content of SUB Article XI.**

(a) *Requirement.* A DoD Component's general terms and conditions must address requirements that recipients must include in subawards to entities that may make lower-tier subawards.

(b) *Award terms and conditions.* A DoD Component's general terms and conditions must use the wording appendix K to this part provides for SUB Article XI.

**Subpart L—Fixed-Amount Subawards (SUB Article XII)**

**§ 1138.1200 Purpose of SUB Article XII.**

SUB Article XII specifies policy and procedures concerning recipients' use of fixed-amount subawards under DoD grants and cooperative agreements. It thereby implements OMB guidance in 2 CFR 200.201(b) and 200.332 and other portions of 2 CFR part 200 as they apply to fixed-amount subawards.

**§ 1138.1205 Content of SUB Article XII.**

(a) *Requirement.* A DoD Component's general terms and conditions must address how a recipient may use a fixed-amount type of subaward, when it requires the Component's prior approval to do so, and what requirements the recipient must include in those subawards.

(b) *Award terms and conditions—(1) General.* A DoD Component's general terms and conditions must use the wording appendix L to this part provides for SUB Article XII.

(2) *Exceptions.*

(i) In addition to the authorities provided in § 1138.5 to omit or reserve all or portions of the wording appendix L to this part provides for SUB Article XII, a DoD Component's general terms and conditions may add wording to Section B of the article to authorize

recipients to use fixed-amount subawards without obtaining the Component's prior approval in other situations for which it would be appropriate to do so, given the nature of the program or programs that use its general terms and conditions.

(ii) However, a DoD Component's general terms and conditions should never authorize recipients' use of fixed-amount subawards for basic or applied research, for the reason given in paragraph B.2.a.ii of the wording appendix L provides for SUB Article XII. It is unrealistic to have a subrecipient commit in advance to accomplishing specific, well-defined, and observable research outcomes. Doing so subjects the subrecipient to undue risk of not being reimbursed for research costs it incurred if it fails to fully accomplish the outcomes.

#### **Appendix A to Part 1138—Terms and Conditions for SUB Article I, “Distinguishing Subawards and Procurements”**

DoD Components must use the following standard wording in SUB Article I in accordance with § 1138.105 of this part:

##### **SUB Article I. Distinguishing Subawards and Procurements. (December 2014)**

*Section A. Required recipient determination.* For each transaction into which you enter with another entity at the next tier below this award, you must determine whether the transaction is a subaward or procurement.

*Section B. Considerations in making the determination.*

1. The primary purpose of the transaction between you and the other entity is the key factor you must use to determine whether the transaction is a subaward or a procurement.

a. The transaction is a subaward and the other entity therefore a subrecipient if the transaction's primary purpose is for you to transfer—for performance by the other entity—a portion of the substantive program for which we are providing financial assistance to you through this award. You will continue to be accountable to us for performance of the project or program under the award, including portions performed by any subrecipients.

b. The transaction is a procurement and the other entity therefore your contractor if the transaction's primary purpose is for you to purchase goods or services that you need to perform the substantive program supported by this award. The distinction from a subaward is the contractor is not performing a portion of the substantive program as a result of the transaction.

2. What you call the transaction is not a factor in distinguishing a subaward from a procurement. If the transaction meets the criterion in paragraph B.1.a of this article, it is a subaward for purposes of the requirements of this award even if you call and consider the transaction a “contract.”

*Section C. Effect of the determination on the next-tier transaction.*

1. *Process for awarding the transaction.* One important consequence of your determining whether a next-tier transaction is a subaward or procurement is that there are different requirements governing the pre-award and time of award processes that you use to award the transaction.

a. SUB Article II of this award specifies pre-award and time of award responsibilities for subawards.

b. PROC Articles I and II of this award govern pre-award and time of award process for awarding procurement transactions.

2. *Transaction terms and conditions.* A second important consequence of your determining whether a next-tier transaction is a subaward or procurement is that the terms and conditions you include in a subaward differ from those you include in a procurement transaction.

a. Section C of SUB Article II of this award addresses requirements you must include in subaward terms and conditions. Those requirements are generally either identical with or directly related to requirements in the general terms and conditions of this award. They include national policy requirements as well as administrative requirements in areas such as financial and programmatic management, property administration, procurement, and reporting.

b. PROC Article III of this award lists requirements you must include in a procurement transaction when applicable to the procurement.

#### **Appendix B to Part 1138—Terms and Conditions for SUB Article II, “Pre-Award and Time of Award Responsibilities”**

DoD Components must use the following standard wording in SUB Article II in accordance with § 1138.205 of this part:

##### **SUB Article II. Pre-Award and Time of Award Responsibilities. (December 2014)**

*Section A. Requirements for unique entity identifiers.*

1. *Definition of “entity.”* For purposes of the unique entity identifier requirements in paragraphs A.2 and 3 of this section, “entity” has the meaning given in paragraph C.3 of appendix A to OMB guidance in 2 CFR part 25.

2. *Pre-notification of potential subrecipients.* You must notify potential subrecipients that no entity may receive a subaward from you under this award unless it has provided its unique entity identifier to you.

3. *Restriction on making subawards.*

a. *General.* You may not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

b. *Exception.* You may make a subaward to an entity that has not provided its unique entity identifier to you in rare cases in which you requested and we approved an exemption from the requirement for the entity to provide a unique entity identifier, based on the criteria in OMB guidance in 2 CFR part 25.110(d).

*Section B. Pre-award risk assessment.*

1. Before making a subaward to an entity, you must perform a risk assessment of the prospective subrecipient, as described in 2

CFR 200.331(b). OMB guidance in 2 CFR 200.205(c) provides examples of factors you may consider in evaluating risk.

2. As part of the risk assessment under paragraph B.1 of this article, you must:

a. Verify that neither the prospective subrecipient nor its principals under the subaward are excluded or disqualified from participating in the transaction, in accordance with requirements in Subpart C of OMB guidance in 2 CFR part 180, as implemented by DoD at 2 CFR part 1125; and

b. If warranted by risks you identify, determine whether to impose award-specific terms and conditions in the subaward to mitigate the risks.

i. These award-specific terms and conditions may be in addition to, or differ from, the terms and conditions that SUB Articles IV through IX of this award require you to include in subawards.

ii. They may include items such as those listed in OMB guidance in 2 CFR 200.207(b)(1) through (6).

iii. Your procedures for imposing and removing the additional or different requirements must comply with the procedural guidance in 2 CFR 200.207(c) and (d).

*Section C. Subaward content.*

1. *Cost-type subawards.*

a. SUB Article III of this award specifies informational content that you must include in each cost-type subaward.

b. SUB Articles IV through VIII specify administrative requirements that you must include:

i. As applicable, in each cost-type subaward to:

A. A domestic U.S. entity (*i.e.*, an entity other than a foreign public entity or a foreign organization); or

B. An organizational unit of a foreign organization if that unit has a place of business in the United States; and

ii. To the maximum extent practicable in each cost-type subaward to either a foreign public entity or an organizational unit of a foreign organization that does not have a place of business in the United States (regardless of whether another organizational unit of that foreign organization has one). However, absent our prior approval, you may not allow that foreign entity or organization to acquire real property or equipment under a subaward.

c. SUB Article IX of this award specifies national policy requirements that you must include, as applicable, in each cost-type subaward.

2. *Fixed-amount type subawards.* SUB Article XII of this award specifies informational content and administrative and national policy requirements that you must include in any fixed-amount subaward that you make.

3. *Additional subaward terms and conditions.* You may include other requirements in your subawards that you need in order to meet your responsibilities under this award for performance of the project or program (including portions performed by subrecipients) and compliance with applicable administrative and national policy requirements.

*Section D. Subaward and executive compensation reporting.* You must report

subaward obligating actions and information on subrecipients' executive compensation as required by REP Article IV of this award.

### Appendix C to Part 1138—Terms and Conditions for SUB Article III, “Informational Content of Subawards”

DoD Components must use the following standard wording in SUB Article III in accordance with § 1138.305 of this part:

#### SUB Article III. Informational Content of Subawards. (December 2014)

*Section A. Informational content in general.* You must include in each subaward (and each subsequent amendment to a subaward that alters the amount of the subaward) the information specified in OMB guidance in 2 CFR 200.331(a)(1), “Federal Award Identification,” with the clarifications provided in Sections B through G of this article.

*Section B. Federal award identification number and award date.* The “Federal Award Identification Number” and “Federal Award Date” described in 2 CFR 200.331(a)(1)(iii) and (iv), respectively, are the award number and award date for this award to you. You must provide the information in a way that makes it clear that the subaward is under this DoD award.

*Section C. Amount of Federal funds obligated.*

1. The “Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient” that is described in 2 CFR 200.331(a)(1)(vi) is either:

- a. The amount of your obligation to the subrecipient, if the terms and conditions of this award do not require you to provide any cost sharing or matching for the project or program the award supports; or
- b. The amount of the Federal share of your subaward obligation if this award does require cost sharing or matching, which in that case is the product of:

- i. The Federal share of total project costs under this DoD award to you, as a percentage of those total project costs; and
- ii. The total amount of project costs obligated for the subaward action.

2. Note that the total project costs of the award and subaward, as used in paragraphs C.1.b.i and ii of this section, include any cost sharing or matching that you or the subrecipient provides if you are counting it toward the cost sharing or matching required under this award.

*Section D. Total amount obligated to the subrecipient.* The “Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including the current obligation,” as described in 2 CFR 200.331(a)(1)(vii), is the cumulative amount to date of the amounts described in Section C of this article.

*Section E. Total Amount of the Federal Award.* The “Total Amount of the Federal Award committed to the subrecipient by the pass-through entity,” as described in 2 CFR 200.331(a)(1)(viii), is the total amount through the end of the subaward that you and the subrecipient mutually agreed upon, to include: funding obligated to date, any future anticipated funding increments, and any options you may exercise in the future.

*Section F. Federal awarding agency, pass-through entity, and awarding official.* The “Name of Federal awarding agency” and “pass-through entity,” as those terms are used in 2 CFR 200.331(a)(1)(x) are the Department of Defense and the business name associated with your registration in the System for Award Management. In that same paragraph of 2 CFR part 200, the “awarding official” is the individual in your organization who made the subaward.

*Section G. Indirect cost rate.* With respect to the requirement in 2 CFR 200.331(a)(1)(xiii) for the subaward to include the “Indirect cost rate for the Federal award:”

1. The rate the subaward must include is the subrecipient's rate, whether it is a rate set by negotiation with a Federal Government agency or you, or is the de minimis rate described in 2 CFR 200.414(f).

2. You are required to include the indirect cost rate only if the subrecipient is willing to share that information with you and assents that information about its rate is not proprietary. If a subrecipient is not willing to share information about its indirect cost rate with you, consult the grants officer for this award to explore alternative ways to assess the reasonableness of costs of the subaward.

### Appendix D to Part 1138—Terms and Conditions for SUB Article IV, “Financial and Program Management Requirements for Subawards”

DoD Components must use the following standard wording in SUB Article IV in accordance with § 1138.405 of this part:

#### SUB Article IV. Financial and Program Management Requirements for Subawards. (December 2014)

*Section A. Purposes of this article in relation to other articles.*

1. This article specifies administrative requirements concerning financial and program management that you must include in the terms and conditions of each cost-type subaward that you make under this award to a domestic entity.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under FMS Articles I through VII of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

*Section B. Financial management system standards.* You must include in any subaward you make under this award the requirements of:

1. Sections A through C of FMS Article I of this award if the subrecipient is a state;
2. Sections B and C of FMS Article I if the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe; or
3. 32 CFR 34.11 if the subrecipient is a for-profit entity.

*Section C. Payments.*

1. *Subawards to States.* You must include the provisions of Section A of FMS Article

II of this award in each subaward you make to a State;

2. *Subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.* The following paragraphs specify requirements you must include in subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

a. *Payment method.*

i. If you are authorized to request advance payments under this award, you must authorize a subrecipient to request advance payments unless:

A. The subrecipient does not maintain, or demonstrate the willingness to maintain, written procedures that minimize the time elapsing between its receipt of each payment and its disbursement of the funds for project or program purposes;

B. You impose a requirement for the subrecipient to be paid by reimbursement as a result of your risk evaluation of the subrecipient under SUB Article II of this award.

C. The subaward is for construction.

ii. If you do not authorize advance payments for one of the reasons given in paragraph C.2.a.i of this article, you must specify either reimbursement or working capital advances as the payment method in accordance with OMB guidance in 2 CFR 200.305(b)(3) and (4).

b. *Payment timing and amount.*

i. *Advances.* You must limit advance payments to the minimum amounts needed and time the payments to be in accordance with the subrecipient's actual, immediate cash requirements in carrying out the project or program under the subaward. The timing and amount of your advance payments to the subrecipient must be as close as is administratively feasible to the subrecipient's actual disbursements for direct project costs and the proportionate share of any allowable indirect costs. Your subawards also must include the requirements of paragraphs B.2.b and c of FMS Article II to specify costs subrecipients must exclude from amounts of their advance payment requests.

ii. *Reimbursements or working capital advances.* You must follow OMB guidance in 2 CFR 200.305(b)(3) and (4) concerning timing and amount of reimbursements or working capital advances.

c. *Frequency of requests.* You must allow the subrecipient to request advance payments or reimbursements, including those associated with the working capital advance payment method, as often as it wishes if you pay using electronic funds transfers and at least monthly otherwise.

d. *Other requirements.*

i. In any subaward that was subject to our consent, you must include the requirements of paragraph B.5 of FMS Article II of this award concerning withholding of payments.

ii. You must include the provisions of paragraph B.6 of FMS Article II concerning depositories in each subaward that authorizes the subrecipient to request advance payments.

3. *Subawards to for-profit entities.* The provision concerning payments in each subaward you make to a for-profit entity

must conform to the requirements in 32 CFR 34.12.

*Section D. Allowable costs, period of availability of funds, and fee and profit.*

1. You must include in each cost-type subaward a requirement that the allowability of costs under the subaward (and any lower-tier subawards or procurement transactions into which the subrecipient enters) must be determined in accordance with the applicable cost principles identified in Section A of FMS Article III of this award, as well as the clarification in Section B of that article if it applies to those cost principles.

2. You must specify in each subaward the period of availability of funds for any project or program purpose so that the period neither begins before nor ends after the period during which you may use funds available to you under this award for that same project or program purpose.

3. You must include in each subaward the provisions concerning fee or profit that are in Section D of FMS Article III of this award.

*Section E. Revision of budget and program plans.* You must include in each subaward provisions requiring the subrecipient to request your approval for any change in the subaward budget or program that would cause a budget or program change under this award for which Section B of FMS Article IV requires you to first obtain our prior approval. You may not approve any budget or program revision that is inconsistent with the purpose or terms and conditions of this award.

*Section F. Non-Federal audits.* You must include a provision in each subaward that you make under this award to require the subrecipient entity to comply with the audit requirements applicable to that entity, as specified in either Section A or Section B of FMS Article V.

*Section G. Cost sharing or matching requirements.* If you make a subaward under which the subrecipient may provide contributions or donations of cash or third-party in-kind contributions to be counted toward any cost sharing or matching that is required under this award, you must include provisions in that subaward to specify:

1. The criteria governing the allowability as cost sharing or matching of the types of cash or third-party in-kind contributions that the subrecipient may contribute or donate. Those criteria are specified in:

a. Sections B through D of FMS Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.

b. The provisions of 32 CFR 34.13(a) if the subaward is to a for-profit entity.

2. The methods for determining and documenting the values of those contributions or donations to be counted as cost sharing or matching. Those methods are specified in:

a. Sections E and F of FMS Article VI of this award if the subaward is to a State, institution of higher education, nonprofit organization, local government, or Indian tribe.

b. The provisions of 32 CFR 34.13(b) if the subaward is to a for-profit entity.

*Section H. Program income.* You must include requirements concerning program income in subawards, as follows:

1. In each subaward to a State, institution of higher education, nonprofit organization, local government, or Indian tribe:

a. You must require the subrecipient to account to you when it earns any program income under the subaward or uses it, so that you can prepare reports you are required to submit to us. If the award-specific terms and conditions of this award require you to account for program income earned after the period of performance, you must include a corresponding requirement in your subawards.

b. You must include the provisions of Sections A through D of FMS Article VII of this award.

c. You may specify the deduction, addition, or cost-sharing or matching alternative—described in 2 CFR 1128.720(b)—or a combination of those alternatives, for the subrecipient's use of any program income it earns. However, you still must comply with the alternative specified in Section E of FMS Article VII and any applicable award-specific terms and conditions for the total amount of program income earned, which includes amounts earned by you and your subrecipients. For example, if we require you to use the deduction alternative, you may authorize a subrecipient to use the addition alternative if you reduce the funding allocated for portions of the project or program that you or other subrecipients perform to make the required reduction in the total award amount.

2. In each subaward to a for-profit entity, you must include the provisions of 32 CFR 34.14, with the appropriate method specified for disposition of program income.

**Appendix E to Part 1138—Terms and Conditions for SUB Article V, “Property Requirements for Subawards”**

DoD Components must use the following standard wording in SUB Article V in accordance with §§ 1138.505 through 1138.520 of this part:

**SUB Article V. Property Requirements for Subawards. (December 2014)**

*Section A. Purposes of this article in relation to other articles.*

1. This article specifies administrative requirements concerning property that you must include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROP Articles I through VI of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

*Section B. Title to property.*

1. *Subawards to institutions of higher education, nonprofit organizations, States, local governments, or Indian tribes.*

a. *General.* You must include terms and conditions in each subaward to flow down to the subrecipient the provisions of:

i. Paragraph A.1 of PROP Article I concerning vesting of title to property acquired under the subaward unless paragraph B.1.b of this section provides otherwise.

ii. Sections B through E of PROP Article I that are applicable to types of property that the subrecipient may acquire, improve, donate, or for which it may otherwise be accountable under the subaward.

b. *Exceptions.* [Reserved.]

2. *Subawards to for-profit entities.*

a. *Real property and equipment.* You must obtain the prior approval of the grants officer before permitting any for-profit subrecipient to acquire or improve real property or equipment under the award.

i. If the grants officer does not grant the approval, you must include a subaward provision that prohibits the firm from acquiring or improving real property or equipment under the subaward.

ii. If the approval is granted, you must include a subaward provision specifying that title vesting and Federal interest are governed by provisions of 32 CFR 34.21(b) and (c).

b. *Supplies.* You must include a subaward provision specifying that vesting of title to supplies is governed by provisions of 32 CFR 34.24(a), subject to the use and disposition requirements of 32 CFR 34.24(b).

c. *Federally owned property.* You must include a provision in any subaward to a for-profit entity under which the entity may be accountable for federally owned property, to state that title to such property will remain vested in the Federal Government.

*Section C. Property management system.* If you make a subaward under which the subrecipient either may acquire or improve equipment, or may be accountable for federally owned property, you must include in the subaward:

1. If the subrecipient is a State, applicable provisions of:

a. Section A of PROP Article II concerning insurance for real property and equipment.

b. Section B of PROP Article II concerning other property management system standards.

2. If the subrecipient is an institution of higher education, nonprofit organization, local government, or Indian tribe, applicable provisions of:

a. Section A of PROP Article II concerning insurance for real property and equipment.

b. Section C of PROP Article II concerning other property management system standards.

3. Applicable provisions of 32 CFR 34.22(a) and 34.23 if the subrecipient is a for-profit entity and:

a. The firm may be accountable under the subaward for federally owned property; or

b. You obtained the grants officer's prior approval for the firm's acquisition of equipment under the subaward.

*Section D. Use and disposition of real property.* If the subrecipient of a subaward you make under this award may acquire or improve real property, then you must include in the subaward:

1. *Use.* The requirements concerning use of real property:

a. In Section A of PROP Article III if the subaward is to an institution of higher



education, nonprofit organization, State, local government, or Indian tribe, unless the award-specific terms and conditions of this award provide otherwise; and

b. In 32 CFR 34.21(d) if the subaward is to a for-profit entity and you obtained the grants officer's prior approval for the firm's acquisition of real property under the subaward.

2. *Disposition.* Provisions to require the subrecipient to request disposition instructions through you when the property is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B of PROP Article III to address the Federal interest in the property.

*Section E. Use and disposition of equipment and supplies.* If you make a subaward under which the subrecipient may acquire or improve equipment, or acquire supplies, you must include in the subaward, as applicable:

1. If the subaward is to a State:

a. The requirements in Sections B and E of PROP Article IV concerning use and disposition of equipment and supplies; and

b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements.

2. If the subaward is to an institution of higher education, nonprofit organization, local government, or Indian tribe:

a. The requirements in Sections C and E of PROP Article IV concerning use of equipment and use and disposition of supplies;

b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements; and

c. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section D of PROP Article IV to address the Federal interest in the equipment.

3. If the subaward is to a for-profit entity:

a. The requirements concerning use and disposition of supplies in 32 CFR 34.24(b);

b. And you obtained the grants officer's prior approval for the firm's acquisition of equipment under the subaward:

i. The requirements concerning use of equipment in 32 CFR 34.21(d); and

ii. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements; and

iii. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B or D of PROP Article IV to address the Federal interest in the equipment.

*Section F. Use and disposition of federally owned property.* If you make a subaward under which the subrecipient may be accountable for federally owned property, you must include subaward provisions specifying that the subrecipient:

1. May use the property for purposes specified in paragraph A.1 of PROP Article V;

2. Must submit requests through you for the award administration office's approval to

use the property for other purposes, as described in paragraph A.2 of PROP Article V;

3. Must request the award administration office's disposition instructions through you when the property is no longer needed for subaward purposes or the subaward ends.

*Section G. Intangible property.* You must include in a subaward provisions specifying the requirements of:

1. Sections A through D of PROP Article VI if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe.

2. Section A of PROP Article VI as it applies to works developed under the subaward, Section B of PROP Article VI, and paragraph C.1 of Section C of PROP Article VI, if the subaward is to a for-profit entity.

#### **Appendix F to Part 1138—Terms and Conditions for SUB Article VI, “Procurement Procedures To Include in Subawards”**

DoD Components must use the following standard wording in SUB Article VI in accordance with § 1138.605 of this part:

##### **SUB Article VI. Procurement Procedures To Include in Subawards. (December 2014)**

*Section A. Purposes of this article in relation to other articles.*

1. This article specifies administrative requirements concerning procurement procedures that you must include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROC Articles I through III of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

*Section B. Subaward to a State.* In any subaward that you make to a State, you must include the requirements of PROC Article I and applicable sections of PROC Article III of this award.

*Section C. Subaward to an institution of higher education, nonprofit organization, local government, or Indian tribe.* In any subaward that you make to an institution of higher education, nonprofit organization, local government, or Indian tribe:

1. You must include the requirements of Sections A through G of PROC Article II and applicable sections of PROC Article III of this award.

2. You must include the requirement for the subrecipient to make available to you, upon request:

a. Technical specifications of proposed procurements, under the conditions described in OMB guidance at 2 CFR 200.324(a); and

b. Other procurement documents for pre-procurement review, under the conditions described in OMB guidance at 2 CFR 200.324(b).

3. If it is possible that, under a subaward you make, the subrecipient may award a construction or facility improvement contract

with a value in excess of the simplified acquisition threshold, you must include provisions in the subaward to require the subrecipient to comply with at least the minimum requirements for bidders' bid guarantees and contractors' performance and payment bonds described in 2 CFR 200.325(a) through (c), unless you determine that the subrecipient's bonding policy and requirements are adequate to protect Federal interests.

*Section D. Subaward to a for-profit entity.* In any subaward you make to a for-profit entity, you must include the requirements in 32 CFR 34.31.

#### **Appendix G to Part 1138—Terms and Conditions for SUB Article VII, “Financial, Programmatic, and Property Reporting Requirements for Subawards”**

DoD Components must use the following standard wording in SUB Article VII in accordance with §§ 1138.705 through 1138.715 of this part:

##### **SUB Article VII. Financial, Programmatic, and Property Reporting Requirements for Subawards. (December 2014)**

*Section A. Purposes of this article in relation to other articles.*

1. This article specifies administrative requirements concerning reporting that you must include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under REP Articles I through III of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

*Section B. Performance reporting.*

1. You must include terms and conditions in each subaward to require the subrecipient to provide any performance information you need, by the time you need it, to comply with the performance reporting requirements in REP Article I and other terms and conditions of this award.

2. You may specify a form, format, or data elements the subrecipient uses to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements this article specifies for your reporting to us).

*Section C. Financial reporting.*

1. You must include terms and conditions in each subaward to require the subrecipient to provide any financial information you need, by the time you need it, to comply with the financial reporting requirements in REP Article II and other terms and conditions of this award.

2. You may specify a form, format, or data elements the subrecipient must use to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article II specifies for your reporting to us).

*Section D. Reporting on property.*

1. Each subaward you make under this award must include provisions concerning property reporting as described in paragraph D.2 of this section if the subrecipient may, under the subaward:

- a. Acquire or improve real property or equipment;
- b. Acquire supplies or intangible property; or
- c. Be accountable for federally owned property.

2. The subaward provisions must require the subrecipient to give you the information you need about the property in order to meet your responsibilities to us under Sections A through D of REP Article III and PROP Articles II through VI.

#### **Appendix H to Part 1138—Terms and Conditions for SUB Article VIII, “Other Administrative Requirements for Subawards”**

DoD Components must use the following standard wording in SUB Article VIII in accordance with § 1138.805 of this part:

#### **SUB Article VIII. Other Administrative Requirements for Subawards. (December 2014)**

##### *Section A. Purposes of this article in relation to other articles.*

1. This article specifies other administrative requirements that you either must or should include in the terms and conditions of each subaward that you make under this award.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under OAR Articles I through VII of this award.

3. SUB Article XII of this award addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under this award.

*Section B. Submission and maintenance of subrecipient information.* You must include the substance of the provision in Section C of OAR Article I in any subaward you make under this award. The provision must require the subrecipient’s disclosure of any evidence directly to the Inspector General, DoD.

*Section C. Records retention and access.* In each subaward you make under this award:

1. If the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe:

- a. You must include the requirements of Section A of OAR Article II with the additional condition that, for any subrecipient under this award that does not have a federally approved rate for indirect or facilities and administrative costs and that does not use the de minimis rate described in 2 CFR 200.414(f), you must:

- i. Require the subrecipient to keep records that support its indirect or facilities and administrative costs charged to the subaward for 3 years from the end of the fiscal year (or other accounting period) to which the costs apply; and

- ii. Keep any plan or computation the subrecipient submits to you to serve as a basis for your determining the reasonableness and allowability of indirect or facilities and

administrative costs of the subaward, for 3 years from the end of the fiscal year (or other accounting period) to which the proposal, plan, or computation applies.

b. You must include the requirements of Sections B, C, and F of OAR Article II.

c. You must include provisions that enable you to comply with the requirements of Section D of OAR Article II concerning records for joint or long-term use.

d. You must include provisions that establish the same rights and responsibilities for the subrecipient under the subaward that Section E of OAR Article II establishes for you under this award.

e. You may not impose any other record retention or access requirements on the subrecipient.

2. If the subaward is to a for-profit entity, you must include the records retention and access provisions of 32 CFR 34.42.

*Section D. Remedies and termination.* The terms and conditions of each subaward you make under this award should specify your rights and responsibilities and those of the subrecipient if you take a remedial action to address a subrecipient’s noncompliance with an applicable Federal statute or regulation or the terms and conditions of your subaward. Each subaward’s terms and conditions should:

1. Identify remedial actions you may take to address the subrecipient’s noncompliance. Available remedies are described in:

- a. OMB guidance in 2 CFR 200.338 for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

- b. 32 CFR 34.52 for a subaward to a for-profit entity.

2. With respect to termination specifically:

- a. Identify conditions under which you, the subrecipient, or both (by mutual agreement) may terminate the subaward, in whole or in part, as described in:

- i. OMB guidance in 2 CFR 200.339(a) for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

- ii. 32 CFR 34.51 for a subaward to a for-profit entity.

b. Inform the subrecipient that you will provide it with a notice of termination if you unilaterally terminate the award.

c. Specify that you and the subrecipient remain responsible for applicable requirements addressed in Sections G and H of this article concerning closeout, post-closeout adjustments, and continuing responsibilities.

3. With respect to either suspension or termination of the subaward, inform the subrecipient about the criteria that you will use to either allow or disallow subaward costs, which are in:

- a. Section C of OAR Article III for a subaward to an institution of higher education, nonprofit organization, State, local government, or Indian tribe; and

- b. 32 CFR 34.52(c) for a subaward to a for-profit entity.

*Section E. Disputes, hearings, and appeals.* Each subaward’s terms and conditions should specify any rights the subrecipient has to a hearing, appeal, or other administrative proceeding if it disputes a

decision you render in administering its subaward. You must comply with any statute or regulation that affords the subrecipient an opportunity for a hearing, appeal, or other administrative proceeding and is applicable to the dispute.

*Section F. Collection of amounts due.* Although your subaward terms and conditions do not need to include any of the requirements of OAR Article V because those requirements do not flow down to subrecipients, you should consider including provisions to specify what you would need from the subrecipient if you owed a debt to the Government under this award that is related to its subaward.

##### *Section G. Closeout.*

1. In each subaward that you make to an institution of higher education, nonprofit organization, State, local government, or Indian tribe, you must include provisions to require the subrecipient to:

- a. Liquidate all obligations that it incurred under the subaward not later than 90 calendar days after the end date of the period of performance of either the subaward or this award, whichever is earlier, unless you grant an extension.

- b. Promptly refund to you any balances of unobligated cash that you advanced or paid to the subrecipient, unless you received authorization from the DoD award administration office for the subrecipient’s use of those funds on other projects or programs.

c. Submit to you:

- i. Any information you need from the subrecipient to meet your responsibilities to us for an accounting of property, under Section D of OAR Article VI; and

- ii. Not later than 90 calendar days after the end date of the period of performance of this award, unless you grant the subrecipient an extension, any information you need to meet your responsibilities to us for final reports, under Section C of OAR Article VI.

2. In each subaward that you make to a for-profit entity, you must include the terms and conditions that you deem necessary for you to be able to comply with the requirements in OAR Article VI.

##### *Section H. Post-closeout adjustments and continuing responsibilities.*

You must include provisions in each subaward to require the subrecipient to provide what you need in order to comply with the requirements of OAR Article VII.

#### **Appendix I to Part 1138—Terms and Conditions for SUB Article IX, “National Policy Requirements for Subawards”**

DoD Components must use the following standard wording in SUB Article IX in accordance with § 1138.905 of this part:

#### **SUB Article IX. National Policy Requirements for Subawards. (December 2014)**

##### *Section A. General.*

1. You must include provisions in the terms and conditions of each subaward you make to require the subrecipient entity’s compliance with each of the national policy requirements in Sections B through E of this article that you determine is applicable,

given the type of entity receiving the subaward and activities it will be carrying out under the subaward.

2. If an entity to which you are about to make a subaward will not accept an award provision requiring its compliance with a national policy requirement that you determine to be applicable, you must alert the award administration office immediately. You may not omit an applicable national policy requirement in order to make the subaward.

3. If at any time during the performance of a subaward, you learn that—or receive a credible allegation that—the subrecipient is not complying with an applicable national policy requirement, you must alert the award administration office immediately.

**Section B. Nondiscrimination national policy requirements.** You must include provisions in each subaward to require the subrecipient's compliance with the nondiscrimination national policy requirements specified in paragraphs A.1 through A.5 of NP Article I, as applicable.

**Section C. Environmental national policy requirements.** You must include provisions in each subaward to require that:

1. The subrecipient comply with all applicable Federal environmental laws and regulations, including those specified in paragraph A.2, A.3, A.5, and A.6 of NP Article II, as applicable.

2. Provide any information you need, when you need it, in order to comply with the requirement to immediately notify us of potential environmental impacts specified in paragraph A.4, A.5, and A.6 of NP Article II, as applicable, due to activities under the award (which includes subaward activities).

**Section D. National policy requirements concerning live organisms.** You must include provisions in each subaward to require the subrecipient's compliance with the national policy requirements concerning human subjects and animals that are specified in paragraphs A.1 and A.2 of NP Article III, as applicable.

**Section E. Other national policy requirements.** You must include provisions in each subaward to require the subrecipient's compliance with the national policy requirements in the following portions of NP Article IV of this award, as applicable:

1. Paragraph A.1.
2. Paragraphs A.3.a and b.
3. Paragraphs A.4 through A.17.

#### **Appendix J to Part 1138—Terms and Conditions for SUB Article X, “Subrecipient Monitoring and Other Post-Award Administration”**

DoD Components must use the following standard wording in SUB Article X in accordance with § 1138.1005 of this part:

#### **SUB Article X. Subrecipient Monitoring and Other Post-Award Administration. (December 2014)**

**Section A. General requirement for subrecipient monitoring.** You must do the post-award monitoring of the subrecipient's activities under each subaward that is needed in order for you to ensure that:

1. The subrecipient carries out the portion of the substantive project or program under this award.

2. The subrecipient is using project funds under the subaward (including any cost sharing or matching the subrecipient provides that is counted as project funds in the approved budget of this award) for authorized purposes.

3. The subrecipient's performance under the subaward is in compliance with applicable Federal statutes and regulations, and the terms and conditions of your subaward.

#### **Section B. Subrecipient monitoring actions.**

1. **Required monitoring actions.** You must, as part of your post-award monitoring of each subrecipient:

a. Review the financial and programmatic information that your subaward terms and conditions require the subrecipient to provide, in accordance with Sections B and C of SUB Article VII of this award.

b. Follow up and ensure that the subrecipient takes timely and appropriate action to remedy deficiencies detected through any means, including audits and on-site reviews.

c. With respect to audits of subrecipients that are required under FMS Article V of this award:

i. Verify that the subrecipient is audited in accordance with those requirements, as applicable (note that Section F of SUB Article IV requires you to include those audit requirements for the subrecipient in the subaward's terms and conditions).

ii. Resolve and issue a management decision for audit findings that pertain to your subaward. Doing so is a requirement under either Section A or B of FMS Article V of this award (Section B requires that explicitly and Section A does so by implementing OMB guidance in 2 CFR 200.521, as well as other portions of subpart F of that part).

iii. Consider whether you need to adjust your own records related to this award based on results of audits, on-site reviews or other monitoring of the subrecipient and, as applicable, notify the award administration office.

2. **Other monitoring actions.** OMB guidance in 2 CFR 200.331(e)(1) through (3) describes other actions that may be useful as part of your subrecipient monitoring program, depending on the outcomes of the pre-award risk assessment you conducted in accordance with Section B of SUB Article II.

**Section C. Remedies and subaward suspension or termination.** With respect to any subaward under this award, you must:

1. Consider whether you need to take any remedial action if you determine that the subrecipient is noncompliant with an applicable Federal statute or regulation or the terms and conditions of your subaward, as described in Section D of SUB Article VIII.

2. Provide a notice of termination to the subrecipient if you terminate its subaward unilaterally for any reason prior to the end of the period of performance.

3. In the case of either suspension or termination of a subaward prior to the end of the period of performance, allow or disallow subaward costs in accordance with Section C of OAR Article III.

#### **Section D. Subaward closeout.**

1. You will close out each subaward when you either:

a. Determine that the subrecipient has completed its programmatic performance under the subaward and all applicable administrative actions; or

b. Terminate the subaward, if you do so prior to completion of the subrecipient's programmatic performance.

2. With respect to the closeout of each subaward:

a. You must pay the subrecipient promptly for allowable and reimbursable costs.

b. Consistent with the terms and conditions of the subaward, you must make a settlement for any upward or downward adjustments to the Federal share of costs after you receive the information you need from the subrecipient to close out the subaward.

c. You should complete the closeout of the subaward no later than one year after you receive and accept the final reports and other information from the subrecipient that you need to close out the subaward.

#### **Appendix K to Part 1138—Terms and Conditions for SUB Article XI, “Requirements Concerning Subrecipients’ Lower-Tier Subawards”**

DoD Components must use the following standard wording in SUB Article XI in accordance with § 1138.1105 of this part:

#### **SUB Article XI. Requirements Concerning Subrecipients’ Lower-Tier Subawards. (December 2014)**

**Section A. Purpose.** This article specifies requirements you must include in any cost-type subaward under which you determine that the subrecipient of your subaward may make lower-tier cost-type subawards to other entities.

**Section B. Requirements for lower-tier subawards.** Your cost-type subaward terms and conditions must require your subrecipient, with respect to each lower-tier cost-type subaward that it makes, to:

1. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that SUB Article I of this award requires you to make for your subawards.

2. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

3. Include in any cost-type subaward it makes at the next tier:

a. The informational content that SUB Article III specifies;

b. The administrative requirements that SUB Articles IV through VIII of this award specify;

c. The national policy requirements that SUB Article IX of this award specifies, as applicable; and

d. The requirements of this article if the next-tier subrecipient may make even lower-tier cost-type subawards to other entities.

4. Carry out the subrecipient monitoring and other post-award administration responsibilities specified in SUB Article X of this award.

## Appendix I to Part 1138—Terms and Conditions for SUB Article XII, “Fixed-Amount Subawards”

DoD Components must use the following standard wording in SUB Article XII in accordance with § 1138.1205 of this part:

### SUB Article XII. Fixed-Amount Subawards. (December 2014)

#### Section A. Limitations on use.

1. You may not use a fixed-amount subaward:

a. If the total value over the life of the subaward will exceed the simplified acquisition threshold.

b. Unless the project or program scope is specific, with definite outcomes, and you are able to establish a reasonable estimate of the actual costs of accomplishing those outcomes.

c. If you will predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under the subaward.

d. If the subrecipient will acquire any real property or equipment under the subaward.

2. For fixed-amount subawards not prohibited by paragraph 1 of this section and except as provided in Section B of this article, you must obtain our prior approval before making a fixed-amount type of subaward.

a. If Section B of FMS Article IV requires you to obtain our prior approval before you make any subaward, and you do not identify the subaward as a fixed-amount subaward when you obtain that approval, then you must subsequently request separate approval before awarding it as a fixed-amount type of subaward.

b. If a subaward is identified as a fixed-amount type of subaward in the budget you submit for our approval, then our approval of the budget is the required prior approval.

*Section B. Fixed-amount subawards that do not require prior approval.* You are not required to obtain our prior approval before using a fixed-amount type of subaward if:

1. The subaward is to either:

a. A foreign public entity; or

b. An organizational unit of a foreign organization, if that unit does not have a place of business in the United States, regardless of whether another organizational unit of that foreign organization has one.

2. You determine that the portion of the project or program under this award which the subrecipient will be carrying out under the subaward has one or more specific outcomes with the following characteristics:

a. You can define the outcomes well enough to specify them at the time you make the subaward. Note that:

i. Outcomes are distinct from inputs needed to achieve the outcomes, such as amounts or percentages of time that subrecipient employees or other participants will spend on the project or program.

ii. The inherently unpredictable nature of basic or applied research makes it rarely, if ever, possible to define specific research outcomes in advance, which makes fixed-amount subawards inappropriate for research. Note that technical performance reports serve to document research outcomes

but are not themselves outcomes, notwithstanding the definition of “performance goals” in OMB guidance at 2 CFR 200.76.

b. The accomplishment of each outcome will be observable and verifiable by you when it occurs, so that you will not need to rely solely on the subrecipient’s assurance of that accomplishment.

c. The subrecipient associates its projected costs with outcomes in the proposal it submits to you, and you are confident that the costs of accomplishment of the outcomes will equal or exceed the subaward amount. This requires either that you have a high degree of confidence:

i. In your estimate of the costs associated with accomplishing the well-defined and observable outcomes, based on the prospective subrecipient’s proposal (and using the applicable cost principles in FMS Article III as a guide); or

ii. That those costs will be within a finite range, rather than a specific amount, so that you may provide an amount of funding under the subaward that does not exceed the lower end of the range, with the provision that the subrecipient agrees to provide any balance above that amount that ultimately is needed to accomplish the outcomes. Your subaward then would include a term or condition to reflect the subrecipient’s agreement to provide that balance (which would be in an amount to be post-determined, when the outcomes are accomplished). Note that this is distinct from a situation in which you predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under its subaward, a situation in which paragraph A.1.c of this article prohibits use of a fixed-amount subaward.

3. a. The subaward is based on a fixed rate per unit of outcome (or “unit cost”) and you have both the confidence:

i. That is described in paragraph B.2.c of this article in the estimated costs associated with each unit of outcome; and

ii. In the subrecipient’s guarantee that it can accomplish at least the number of units of outcome on which your total subaward amount will be based (*i.e.*, the product of the unit cost and the number of units of outcome the subrecipient guarantees to accomplish).

b. Note, however, that not every fixed rate subaward is also a fixed-amount subaward. If you have confidence in the unit cost but not also in the subrecipient’s ability to guarantee the number of units of outcome that it will accomplish, then you should set a not-to-exceed award amount based on the number of units desired and reduce the subaward amount at the end if the subrecipient accomplishes fewer than that number. Examples of activities for which it may be appropriate to award this type of fixed rate subaward that is not a fixed-amount subaward include:

i. A clinical trial for which the unit cost is the cost of treating each participant. The not-to-exceed amount would be based on the number of participants the subrecipient planned to recruit and the final award on the number who actually participated, documentation for which would be subject to audit.

ii. Labor costs for performance of a portion of the project or program under this award by a firm that treats its indirect cost rate as proprietary information. The unit cost in that case may be “loaded” labor rates for the firm’s employees that include indirect costs. The final award amount would depend on the number of labor hours the firm’s employees expended under the subaward, documentation for which may be audited without exposing proprietary details associated with the actual costs.

*Section C. Informational content of fixed-amount subawards.* You must include in each fixed-amount subaward the informational content, other than the indirect cost rate, that is described in SUB Article III of this award.

*Section D. Terms and conditions addressing administrative requirements.*

1. *General.* This section:

a. Specifies the minimum set of terms and conditions (in lieu of the more extensive set specified in SUB Articles IV through X for cost-type subawards) addressing administrative requirements that you must include in each fixed-amount subaward:

i. To an entity other than a foreign organization, as applicable; and

ii. To the maximum extent practicable, to a foreign organization.

b. Does not preclude the inclusion of other requirements that you need in order to meet your responsibilities under this award for performance of the project or program and compliance with applicable administrative and national policy requirements.

2. *Financial and program management requirements.*

a. *Financial management system standards.* For a subaward to other than a for-profit entity, your subaward must require the subrecipient to include the information specified in paragraph B.1 of FMS Article I in its financial management system, for the purposes of the non-federal audits required by paragraph 2.d of this section.

b. *Payments.* Your payments must be based on accomplishment of the outcomes and associated costs that you used to establish the award amount, rather than on subrecipient expenditures for project or program purposes. Milestone payments before the end of the subaward’s period of performance may be appropriate if there are outcomes that the subrecipient will accomplish at different times during that period.

c. *Revision of budget and program plans.*

If our prior approval was required under paragraph A.2 of this article for use of a fixed-amount type of subaward, then you must:

i. Request our prior approval for any change in scope or objective of the subaward; and

ii. Therefore include a requirement in the subaward for the subrecipient to request that approval through you.

d. *Non-federal audits.* You must include the requirement for non-Federal audits described in Section F of SUB Article IV. The audits are intended to focus on compliance with the performance requirements in the subaward terms and conditions and not to review actual costs as they would for a cost-type subaward.

### 3. Property requirements.

a. *Federally owned property.* If the subrecipient will be accountable for federally owned property, you must include the property management system, use, and disposition requirements described in Sections C and F of SUB Article V that are applicable to federally owned property.

b. *Intangible property.* You must include the applicable intangible property requirements described in Section G of SUB Article V.

4. *Reporting requirements.* You must include requirements for reporting that you need in order to meet your responsibilities under this award for reporting to us.

### 5. Other administrative requirements.

a. *Integrity-related information.* You must include the substance of the provision in Section C of OAR Article I in any subaward you make under this award. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

### b. Records retention and access.

i. You must include the requirements for records retention and access in paragraph A.3 and Sections B and F of OAR Article II, as applicable, if the subaward is to an institution of higher education, nonprofit organization, State, local government, or Indian tribe. You may not impose any other records retention or access requirements on the subrecipient.

ii. You must include the corresponding requirements of 32 CFR 34.42 if the subaward is to a for-profit entity.

c. *Remedies and termination.* You must include:

i. The requirements concerning remedies and termination that are described in paragraphs D.1 and 2 of SUB Article VIII;

ii. Provisions addressing any hearing and appeal rights the subrecipient has, as described in Section E of SUB Article VIII; and

iii. Terms and conditions addressing adjustment of the amount of the subaward if it is terminated before the subrecipient accomplishes all of the specified outcomes.

d. *Continuing responsibilities.* You must include requirements concerning continuing responsibilities for audits and records retention and access that are described in paragraphs B.1 and 3 of OAR Article VII.

e. *Collection of amounts due.* You should consider including requirements concerning collection of amounts due, as described in Section F of SUB Article VIII.

*Section E. National policy requirements for fixed-amount subawards.* You must include in the terms and conditions of each fixed-amount subaward the national policy requirements that SUB Article IX of this award specifies, as applicable.

*Section F. Subrecipient monitoring and other post-award administration.* You must carry out the subrecipient monitoring and post-award administration actions specified in SUB Article X, as applicable.

*Section G. Fixed-amount subawards at lower tiers.*

### 1. Authority.

a. If Section B of this article authorizes you to use a fixed-amount type of subaward without our prior approval in some

situations, a cost-type subaward that you make may authorize the subrecipient to use fixed-amount subawards at the next lower tier in those same situations without our prior approval.

b. If you wish to allow a subrecipient of a cost-type subaward to use fixed-amount subawards at the next tier in other situations (*i.e.*, situations in which this article requires you to obtain our prior approval before using a fixed-amount type of subaward), your subaward terms and conditions must require the subrecipient to submit a request through you to obtain our prior approval for use of that type of subaward.

2. *Subaward requirements.* If your subrecipient is authorized to use lower-tier fixed-amount subawards, as described in paragraphs 1.a and b of this section, your subaward's terms and conditions must:

a. Require the subrecipient, before it makes any lower-tier fixed-amount subaward, to:

i. Ensure that the lower-tier transaction is a subaward, rather than a procurement, by making the determination that SUB Article I of this award requires you to make for your subawards.

ii. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of this award requires you to make for your subawards.

b. Include the requirements specified in Sections A through F of this article.

Dated: October 19, 2016.

**Aaron Siegel,**

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

[FR Doc. 2016-25701 Filed 11-4-16; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

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

[DOD-2016-OS-0055]

RIN 0790-AJ50

### DoD Grant and Agreement Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** This notice of proposed rulemaking (NPRM) is the last in a sequence of six NPRM documents in this **Federal Register** that collectively establishes for DoD grants and cooperative agreements an updated interim implementation of Governmentwide guidance on administrative requirements, cost principles, and audit requirements for Federal awards and make other needed updates to the DoD Grant and Agreement Regulations (DoDGARs). This NPRM removes two existing DoDGARs parts and revises four others in order to conform them with the 11 parts of the DoDGARs proposed in the

NPRMs preceding this one in this section of this **Federal Register**.

**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 six NPRMs in this section of this **Federal Register**, these NPRMs collectively make a major portion of the updates to the Department of Defense Grant and Agreement Regulations (DoDGARs) that are needed in order to implement OMB guidance at 2 CFR part 200 and for other purposes. The first five NPRMs in the sequence propose eleven new DoDGARs parts located in chapter XI of title 2 of the Code of Federal Regulations (CFR), which will ultimately be the location in the CFR for all of the DoDGARs. This sixth and final NPRM in the sequence proposes conforming changes to the portion of the DoDGARs that will remain for an interim period in subchapter C of chapter I of title 32 of the CFR, which is where all of the DoDGARs were originally located. A second round of DoDGARs updates to be proposed for comment in the future will relocate the