

Rules and Regulations

Federal Register

Vol. 85, No. 190

Wednesday, September 30, 2020

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

The Code of Federal Regulations is sold by the Superintendent of Documents.

ENVIRONMENTAL PROTECTION AGENCY

2 CFR Part 1500

[EPA-HQ OMS-2020-0018; 10010-32-OMS]

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule with request for comment.

SUMMARY: This regulatory action revises certain provisions of Environmental Protection Agency (EPA) financial assistance regulations to provide more flexibility to recipients of Environmental Protection Agency (EPA) financial assistance and streamline dispute procedures for applicants and recipients of EPA financial assistance. The revisions to this rule are exempt from the notice and comment requirements of the Administrative Procedure Act (APA) because it is a matter relating to agency management concerning grants.

DATES: *Effective date:* This interim final rule is effective November 12, 2020.

Applicability date: This interim final rule applies to EPA financial assistance agreements awarded or amended to add funds on or after or disputes arising from agency decisions issued on or after November 12, 2020. Disputes arising from agency decisions issued prior to the effective date of this rule will remain subject to the procedures in the prior regulations.

Comment date: Comments must be received on or before November 30, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. OMS-2020-0018 by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.

- *Email:* Docket_OMS@epa.gov.

- *Mail:* OMS Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>. Such deliveries are only accepted during the Docket's normal hours of operation: 8:30 a.m. to 4:30 p.m., and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OMS-2020-0018.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Docket ID No. OMS-2020-0018, OMS Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OMS Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: Alexandra Raver at raver.alexandra@epa.gov or (202) 564-5296.

SUPPLEMENTARY INFORMATION: EPA's revisions to 2 CFR part 1500 are summarized below.

1. EPA will add a provision at 2 CFR 1500.1(a) clarifying that allowable participant support costs under 2 CFR 200.1, *Participant support costs*, may include rebates or other subsidies provided to program participants or program beneficiaries when authorized by the statutory authority for the financial assistance program. The provision applies to subsidies used for purchase and installation of commercially available, standard ("off the shelf") pollution control equipment or low emission vehicles under the Diesel Emission Reduction Act program or other programs when the program participant rather than the recipient owns the equipment. Other examples of these other EPA funded programs specified in EPA's Interim Guidance on Participant Support Costs include subsidies or rebates provided to program beneficiaries to encourage participation in statutorily authorized programs to encourage environmental stewardship such as Best Management Practices under Clean Water Act 319 nonpoint source management programs, subsidies to promote adoption of source reduction practices by businesses under section 6605 of the Pollution Prevention Act, and rebates or subsidies for wood stove replacement under financial assistance programs authorized by the Clean Air Act or EPA's annual appropriation acts.

2. EPA has added a new provision at 2 CFR 1500.3(b) stating that subrecipient monitoring and

management requirements at 2 *CFR* 200.331 through 200.333 do not apply to transactions entered into with borrowers by recipients of Clean Water State Revolving Fund (CWSRF) capitalization grants and Drinking Water State Revolving Fund (DWSRF) capitalization grants. This revision is consistent with the Administration's emphasis, as described in the President's Management Agenda, Cross-Agency Priority Goal on Results Oriented Accountability for Grants, on risk-based approaches to streamlining requirements for recipients whose performance record warrants burden reduction and the importance of deference to states. CWSRF and DWSRF programs are mature Federal grant programs with comprehensive program specific regulations and capitalization grants are administered by state agencies with well-established processes for managing loans and monitoring borrower compliance with loan agreements. This regulatory change will allow states to follow their own procedures rather than those mandated by 2 *CFR* 200.331 through 200.333. Requirements for reporting subaward and executive compensation in 2 *CFR* part 170 and internal controls described at 2 *CFR* 200.303 will continue to apply to CWSRF and DWSRF program grant recipients and borrowers. Recipients of Brownfields Revolving Loan Fund capitalization grants and their borrowers as well other EPA revolving loan fund (RLF) capitalization grant programs remain subject to 2 *CFR* 200.331 through 200.333 and other applicable regulations. Eligibility for these grants is not necessarily limited to states.

3. EPA has revised 2 *CFR* 1500.7 to provide that recipients may add all program income to their EPA funds for use under the purposes and conditions of the assistance agreement even if program income exceeds the amount anticipated at time of award. The revision will allow recipients to deduct the cost of generating program income from gross program income to determine net program income provided these costs have not been charged to any Federal award or the terms of the agreement do not preclude deducting the cost of generating program income. EPA has extended the policy of allowing recipients of RLF capitalization grants to draw down funds from EPA prior to using program income to all RLF programs except the CWSRF and DWSRF programs, which have their own regulations.

4. EPA has revised 2 *CFR* 1500.9 to clarify the scope of the limitation on the allowability of costs for individual consultant fees on EPA assistance

agreements to be consistent with the policy EPA announced in 69 FR 18380 (April 7, 2004). Additionally, the regulation specifies that borrowers under EPA assistance programs for capitalization of revolving loan funds are not subject to the limitation on consultant fee costs.

5. EPA has revised the 2 *CFR* part 1500, subpart E, disputes procedures to exempt the following decisions from the procedures.

a. Decisions to decline to fund non-competitive applications and not to award incremental or supplemental funding based on the availability of funds or agency priorities.

b. Decisions on requests for reconsideration of Specific conditions under 2 *CFR* 200.208.

c. Decisions to deny requests for no-cost extensions under 2 *CFR* 200.308(e)(2), 40 *CFR* 35.114(b), and 40 *CFR* 35.514(b).

d. Denials of requests for EPA approval of procurement through noncompetitive proposals under 2 *CFR* 200.320(c)(4).

EPA has also eliminated reviews of Dispute Decision Official (DDO) decisions by the Director of the Office of Grants and Debarment or Regional Administrators as currently provided for in 2 *CFR* 1500.17 through 1500.19. These reviews will be replaced by a procedure that allows applicants and recipients to petition the DDO to reconsider adverse dispute decisions on an expedited basis. Regional Administrators may act as DDOs or designate another official to be the DDO.

In addition to the above described substantive revisions, EPA will renumber the sections in 2 *CFR* part 1500 to reflect the addition of a new § 1500.1.

I. General Information

A. Affected Entities

Entities affected by this action are those that apply for and/or receive Federal financial assistance (grants, cooperative agreements or fellowships) from EPA including but not limited to: State and local governments, Indian Tribes, Intertribal Consortia, Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and Individuals.

II. Background

On December 19, 2014 (79 FR 76050–76054) EPA promulgated 2 *CFR* part 1500, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. These regulations supplement OMB's 2 *CFR* part 200 regulations covering the same subjects which were promulgated that same day (79 FR 75871). EPA's experience in administering these

regulations indicates that applicants and recipients would benefit from clarity regarding EPA's interpretation of these regulations as well as additional flexibility. Further, EPA believes the process for disputing adverse actions the EPA takes against applicants or recipients could be streamlined without compromising fairness. The revisions to 2 *CFR* part 1500 that EPA is making on an interim final basis achieve these objectives. The rule will become final without further revision if no changes are warranted based on comments EPA receives.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not subject to Executive Order 13771 because it is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12886.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 2 *CFR* parts 200 and 1500 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2030–0020. The OMB control numbers for EPA's regulations in 40 *CFR* are listed in 40 *CFR* part 9.

D. Regulatory Flexibility Act

This interim final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because this rule pertains to grants, which the APA expressly exempts from notice and comment rulemaking requirements. 5 U.S.C. 553(a)(2).

E. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action affects all applicants and recipients of EPA financial Federal assistance and therefore no one entity type will be impacted disproportionately or significantly.

F. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action affects all applicants and recipients of EPA financial Federal assistance and therefore no one entity type will be impacted disproportionately. Thus, Executive Order 13132 does not apply to this action.

G. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action affects all applicants and recipients of EPA financial Federal assistance and therefore no one entity type will be impacted disproportionately. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials on these changes.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in E.O. 12866.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22,

2001), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This action does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that it is not practicable to determine whether this action has disproportionately high and adverse effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

L. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 2 CFR Part 1500

Accounting, Grant programs, Grants administration, Loan programs, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Andrew Wheeler,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 2 CFR part 1500 as follows:

PART 1500—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 1500 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 136 *et seq.*, 15 U.S.C. 2601 *et seq.*, 20 U.S.C. 4011 *et seq.*, 33 U.S.C. 1251 *et seq.*, and 1401 *et seq.*, 42 U.S.C. 241, 242b, 243, 246, 300f *et seq.*, 1857 *et seq.*, 6901 *et seq.*, 7401 *et seq.*, and 9601 *et seq.*; 2 CFR part 200.

§§ 1500.17 through 1500.19 [Removed]

■ 2. Remove §§ 1500.17 through 1500.19.

§§ 1500.1 through 1500.16 [Redesignated as §§ 1500.2 through 1500.17]

■ 3. Redesignate §§ 1500.1 through 1500.16 as §§ 1500.2 through 1500.17.
■ 4. Add subpart A to read as follows:

Subpart A—Acronyms and Definitions**§ 1500.1 Definitions.**

(a) *Participant support costs.* The Environmental Protection Agency (EPA) has supplemented 2 CFR 200.1, *Participant support costs*, to provide that allowable participant support costs under EPA assistance agreements include:

(1) Rebates or other subsidies provided to program participants for purchases and installations of commercially available, standard (“off the shelf”) pollution control equipment or low emission vehicles under the Diesel Emission Reduction Act program or programs authorized by EPA appropriation acts and permitted by terms specified in EPA assistance agreements or guidance, when the program participant rather than the recipient owns the equipment.

(2) Subsidies, rebates, and other payments provided to program beneficiaries to encourage participation in statutorily authorized programs to encourage environmental stewardship and enable the public to participate in EPA funded research, pollution abatement, and other projects or programs to the extent permitted by statutes and terms specified in EPA assistance agreements or guidance.

(b) [Reserved]
■ 5. Revise newly redesignated § 1500.3 to read as follows:

§ 1500.3 Applicability.

(a) Uniform administrative requirements and cost principles (subparts A through E of 2 CFR part 200 as supplemented by this part) apply to foreign public entities or foreign

organizations, except where EPA determines that the application of this part would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government.

(b) Requirements for subrecipient monitoring and management at 2 CFR 200.331 through 200.333 do not apply to loan, loan guarantees, interest subsidies and principal forgiveness, purchases of insurance or local government debt or similar transactions with borrowers by recipients of Clean Water State Revolving Fund (CWSRF) capitalization grants and Drinking Water State Revolving Fund (DWSRF) capitalization grants. Requirements for reporting subaward and executive compensation in 2 CFR part 170 and internal controls described at 2 CFR 200.303 continue to apply to CWSRF and DWSRF grant recipients and borrowers.

■ 6. Revise newly redesignated § 1500.8 to read as follows:

§ 1500.8 Program income.

(a) *Governmental revenues.* Permit fees are governmental revenue and not program income. (See 2 CFR 200.307(c)).

(b) *Use of program income.* The default use of program income for EPA awards is addition even if the amount of program income the non-Federal entity generates exceeds the anticipated amount at time of the award of the assistance agreement. Unless the terms of the agreement provide otherwise, recipients may deduct costs incidental to the generation of program income from gross income to determine program income, provided these costs have not been charged to any Federal award. (See 2 CFR 200.307(b)). The program income shall be used for the purposes and under the conditions of the assistance agreement. (See 2 CFR 200.307(e)(2)).

(c) *Brownfields Revolving Loan.* To continue the mission of the Brownfields Revolving Loan fund, recipients may use EPA grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their respective closeout agreements.

(d) *Other revolving loan programs.* Recipients of EPA funding for other revolving loan fund programs may use EPA grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate

the revolving loan fund or some other authorized purpose as outlined in their closeout agreement. This paragraph (d) does not apply to EPA’s Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs which are subject to their own regulations.

■ 7. Revise newly redesignated § 1500.10 to read as follows:

§ 1500.10 General procurement standards.

(a) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients, and their contractors or subcontractors to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law. (These non-Federal entities may, however, pay consultants more than this amount with non-EPA funds.) The limitation in this paragraph (a) applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices.

(b) All contracts between recipients and subrecipients and individual consultants are subject to the procurement standards in subpart D of 2 CFR part 200. Contracts or subcontracts with multi-employee firms for consulting services are not affected by the limitation in paragraph (a) of this section provided the contractor or subcontractor rather than the recipient or subrecipient selects, directs and controls individual employees providing consulting services.

(c) Borrowers under EPA revolving loan fund capitalization grant programs are not subject to paragraphs (a) and (b) of this section.

■ 8. Amend newly redesignated § 1500.13 by:

- a. Revising paragraphs (a) introductory text, (a)(1), (c) introductory text, and (c)(1);
- b. Adding a semicolon at the end of paragraph (c)(2);
- c. Removing the word “and” at the end of paragraph (c)(4);
- d. Removing the period at the end of paragraph (c)(5) and adding a semicolon in its place; and
- e. Adding paragraphs (c)(6) through (9).

The revisions and additions read as follows:

§ 1500.13 Purpose and scope of this subpart.

(a) This section provides the process for the resolution of pre-award and post-

award assistance agreement disputes as described in § 1500.14, except for:

(1) Assistance agreement competition-related disputes which are covered by EPA’s Grant Competition Dispute Resolution Procedures; and,

* * * * *

(c) Determinations affecting assistance agreements made under certain Agency decision-making processes are not subject to review under the procedures in this subpart or the Agency’s procedures for resolving assistance agreement competition-related disputes. These determinations include, but are not limited to:

(1) Decisions on requests for exceptions under § 1500.4;

* * * * *

(6) Decisions to decline to fund non-competitive applications or not to award incremental or supplemental funding based on the availability of funds or agency priorities;

(7) Decisions on requests for reconsideration of specific award conditions under 2 CFR 200.208;

(8) Decisions to deny requests for no-cost extensions under 2 CFR 200.308(e)(2), 40 CFR 35.114(b), and 40 CFR 35.514(b); and

(9) Denials of requests for EPA approval of procurement through noncompetitive proposals under 2 CFR 200.320(c)(4).

■ 9. Amend newly redesignated § 1500.14 by revising paragraphs (c) through (e) to read as follows:

§ 1500.14 Definitions.

* * * * *

(c) *Agency Decision* is the agency’s initial pre-award or post-award assistance agreement determination that may be disputed in accordance with this subpart. The Agency Decision is sent by the Action Official (AO) to the Affected Entity electronically and informs them of their dispute rights and identifies the Dispute Decision Official (DDO). An Agency Decision based on audit findings serves as EPA’s *Management decision* as defined in 2 CFR part 200.1.

(d) *Dispute* is a disagreement by an Affected Entity with a specific Agency Decision submitted to the DDO in accordance with this subpart.

(e) *Dispute Decision Official (DDO)* is the designated agency official responsible for issuing a decision resolving a Dispute.

(1) The DDO for a Headquarters Dispute is the Director of the Grants and Interagency Agreement Management Division in the Office of Grants and Debarment or designee. To provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Headquarters DDO.

(2) The DDO for a Regional Assistance Agreement Dispute is the Regional Administrator or the official designated by the Regional Administrator to issue the written decision resolving the Dispute. To provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Regional DDO.

* * * * *

■ 10. Revise newly redesignated § 1500.15 to read as follows:

§ 1500.15 Submission of Dispute.

An Affected Entity or its authorized representative may dispute an Agency Decision by electronically submitting a Dispute to the DDO identified in the Agency Decision. In order for the DDO to consider the Dispute, it must satisfy the following requirements:

(a) *Timeliness.* The DDO must receive the Dispute no later than 30 calendar days from the date the Agency Decision is electronically sent to the Affected Entity. The DDO will dismiss any Dispute received after the 30-day period unless the DDO grants an extension of time to submit the Dispute. The Affected Entity must submit a written request for extension to the DDO before the expiration of the 30-day period. The DDO may grant a one-time extension of up to 30 calendar days when justified by the situation, which may include the unusual complexity of the Dispute or because of exigent circumstances.

(b) *Method of submission.* The Affected Entity must submit the Dispute electronically via email to the DDO, with a copy to the AO, using the email addresses specified in the Agency Decision within the 30-day period stated in paragraph (a) of this section.

(c) *Contents of Dispute.* The Dispute submitted to the DDO must include:

- (1) A copy of the disputed Agency Decision;
- (2) A detailed statement of the specific legal and factual grounds for the Dispute, including copies of any supporting documents;
- (3) The specific remedy or relief the Affected Entity seeks under the Dispute; and
- (4) The name and contact information, including email address, of the Affected Entity's designated point of contact for the Dispute.

■ 11. Revise newly redesignated § 1500.16 to read as follows:

§ 1500.16 Notice of receipt of Dispute to Affected Entity.

Within 15 calendar days of receiving the Dispute, the DDO will provide the Affected Entity a written notice, sent electronically, acknowledging receipt of the Dispute.

(a) *Timely Disputes.* If the Dispute was timely submitted, the notice of acknowledgement may identify any additional information or documentation that is required for a thorough consideration of the Dispute. The notice should provide no more than 30 calendar days for the Affected Entity to provide the requested information. If it is not feasible to identify such information or documentation in the notice the DDO may request it at a later point in time prior to issuance of the Dispute decision.

(b) *Untimely Disputes.* If the DDO did not receive the Dispute within the required 30-day period, or any extension of it, the DDO will notify the Affected Entity that the Dispute is being dismissed as untimely and the Agency Decision of the AO becomes final. The dismissal of an untimely Dispute constitutes the final agency action. In appropriate circumstances, the DDO may, as a matter of discretion, consider an untimely Dispute if doing so would be in the interests of fairness and equity.

■ 12. Revise newly redesignated § 1500.17 to read as follows:

§ 1500.17 Determination of Dispute.

(a) In determining the merits of the Dispute, the DDO will consider the record related to the Agency Decision, any documentation that the Affected Entity submits with its Dispute, any additional documentation submitted by the Affected Entity in response to the DDO's request under § 1500.16(a), and any other information the DDO determines is relevant to the Dispute provided the DDO gives notice of that information to the Affected Entity. The Affected Entity may not on its own initiative submit any additional documents except in the support of a request for reconsideration under paragraph (c) of this section.

(b) The DDO will issue the Dispute decision within 180 calendar days from the date the Dispute is received by the DDO unless a longer period is necessary based on the complexity of the legal, technical, and factual issues presented. The DDO will notify the Affected Entity if the expected decision will not be issued within the 180-day period and if feasible will indicate when the decision is expected to be issued. The DDO will issue the Dispute decision electronically and advise the Affected Entity of procedures for requesting reconsideration. The DDO's decision will constitute the final agency action unless the Affected Entity electronically petitions the DDO for reconsideration within 15 calendar days of issuance of the DDO Decision. The Affected Entity must include a detailed statement of the

factual and legal grounds warranting reversal or modification of the DDO decision. In addition, the Affected Entity may submit additional documents that were not previously provided to the DDO.

(c) If a petition for reconsideration is submitted, the DDO's will advise the Affected Entity within 15 calendar days of receipt of the petition whether the DDO Decision will be reconsidered. The DDO will issue this determination electronically. DDO's will only grant a reconsideration petition if the Affected Entity provides relevant and material evidence that was not available to the Affected Entity at the time the Dispute was submitted or to correct a clear and prejudicial error of fact or law. Denial of a petition for reconsideration constitutes final agency action and the DDO will advise the Affected Entity of the reasons for denying the reconsideration in writing.

(d) If the DDO grants a reconsideration petition, the DDO will issue a revised DDO Decision within 30 calendar days of acceptance of the reconsideration petition unless a longer period is necessary based on the complexity of the legal, technical, and factual issues presented. The DDO will issue the revised DDO Decision electronically. The revised DDO Decision and any new material considered by the DDO in making the revised DDO Decision will become part of the record of the Dispute. The revised DDO Decision will constitute final agency action.

(e) The DDO may consider untimely filed reconsideration petitions only if necessary, to correct a DDO Decision that is manifestly unfair and inequitable in light of relevant and material evidence that the Affected Entity could not have discovered during the 30-day period for petitioning for reconsideration. This evidence must be submitted within six months of the date of the DDO Decision. The DDO will advise the Affected Entity within 30 days of receipt of an untimely filed reconsideration petition whether the DDO will accept the petition. Denial of an untimely filed reconsideration petition constitutes final agency action.

[FR Doc. 2020-16894 Filed 9-29-20; 8:45 am]

BILLING CODE 6560-50-P