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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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

2 CFR Parts 700

RIN 0412-AB12

USAID Assistance Regulation: Plain Language and Conforming Revisions

AGENCY: U.S. Agency for International Development.

ACTION: Direct final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is issuing this final rule revising the Agency for International Development Assistance Regulation to maintain consistency with Federal and agency regulations and guidance, make editorial amendments to clarify the regulation, and implement the Office of Management and Budget's April 2024 revisions.

DATES: This rule is effective October 1, 2024, without further action, unless significant adverse comments are received by September 3, 2024. If significant adverse comment(s) are received, USAID will publish a timely withdrawal of those portion(s) of the rule in the **Federal Register**. Submit comments on or before September 3, 2024.

ADDRESSES: You may send comments, identified by your name, company name (if any), and the Regulatory Information Number (RIN) 0412-AB12 for this rulemaking via the following method:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. We recommend that you do not submit information that you consider Confidential Business Information (CBI) or any information

that is otherwise protected from disclosure by statute. If your comment cannot be submitted using <https://www.regulations.gov>, please email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Kelly Miskowski, 202-256-7378, policymailbox@usaid.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

USAID is publishing this revision as a direct final rule as the changes are conforming and administrative amendments, and the agency does not anticipate any significant adverse comments. This rule will be effective on the date specified in the **DATES** section above without further notice unless significant adverse comment(s) are received by the date specified in the **DATES** section above.

USAID will only address comments that explain why the rule would be inappropriate, ineffective, or unacceptable without a change. USAID may not consider comments that are insubstantial or outside the scope of the rule.

If significant adverse comments are received on the direct final rule, USAID will publish a timely partial withdrawal in the **Federal Register** informing the public what sections of the rule will not take effect. Any portions of the final rule for which no significant adverse comments are received will become final after the designated period.

Additionally, USAID is publishing a separate document in the "Proposed Rules" section of this **Federal Register** that will serve as the proposal to approve revision for which significant adverse comments may be received. In this case, USAID will address all public comments in a subsequent final rule based on the proposed rule. USAID will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Background

On December 13, 2021, the President issued Executive Order 14058 entitled "Transforming Federal Customer Experience and Service Delivery to Rebuild trust in Government". Section 4(m) of this E.O. requires that USAID review and revise regulations to ensure that they are clear and intelligible, do

not contain unjustified administrative burdens or excessive paperwork requirements, and do not place undue burdens on local organizations and underserved communities.

On April 22, 2024, The Office of Management and Budget (OMB) issued a final rule revising the Uniform Guidance for Federal Financial Assistance (89 FR 30046). This was the result of a comprehensive process to revise and strengthen Title 2 of the Code of Federal Regulations ("2024 Revisions") with multiple opportunities for the public to provide feedback. OMB then issued OMB Memo M-24-11, "Reducing Burden in the Administration of Federal Financial Assistance" which provided implementation guidance to agencies. This memo directs agencies to implement the 2024 Revisions quickly and consistently but no later than October 1, 2024. The purpose of the 2024 revisions was to: (1) incorporate statutory requirements and administration priorities; (2) reduce agency and recipient burden; (3) clarify sections that recipients or agencies have interpreted in different ways; and (4) rewrite applicable sections in plain language.

In furtherance of both E.O. 14058 and the 2024 Revisions, USAID proposes to revise 2 CFR 700 in its entirety to clarify the regulation, make plain language revisions, align text to the 2024 revisions, and reduce agency and recipient burden. Given that USAID will be making mostly editorial revisions to the chapter in its entirety, a courtesy redline copy is located here for ease of reference: <https://www.usaid.gov/document/track-changes-version-2-cfr-700-usaid-assistance-regulation>.

This rule incorporates updates to 2 CFR 700.

The following changes are implemented by this final rule:

- Subpart A of 2 CFR 700 at 2 CFR 700.1 is revised to relocate definitions which are specific to Branding and Marking 2 CFR 700.16 and provide plain language definitions. 2 CFR 700.0, Acronyms, is added and reserved.

- Subpart B of 2 CFR 700 at 2 CFR 700.2, 700.3, 700.4, and 700.5 is revised to align language with the 2024 Revisions and clarify that Subparts A through D of 2 CFR part 200 apply to for-profit entities located in the United States or its territories. The Federal

Acquisition Regulation at 48 Part 30 and 31 takes precedence over the cost principles in Subpart E for both U.S. based and foreign for-profit entities. This is already USAID's policy; so, the language in the applicability section has been revised for clarity.

- Subpart C of 2 CFR 700 at 700.6 and 700.7 is revised for clarity.

- Subpart D of 2 CFR 700 at 700.8, 700.9, 700.10, 700.11, 700.12, 700.13, 700.14, and 700.15 is revised to align language with the 2024 Revisions and for clarity.

- Subpart E of 2 CFR 700 is added and reserved to align with the structure of 2 CFR 200.

- Subpart F of 2 CFR 700 is added and reserved to align with the structure of 2 CFR 200.

- Subpart G is added, and 2 CFR 700.16 is moved to this section to outline USAID specific requirements that are not derived from 2 CFR 200. This section is revised for plain language revisions, to conform with changes to underlying laws, and to reduce agency and recipient burden. Specifically, this section is revised to allow for Agreement Officers to indicate in the Notice of Funding Opportunity that an apparently successful applicant may submit a Branding Strategy and Marking Plan after the award is made rather than requiring one before.

III. Impact Assessments

(1) *Executive Order 12866 (Regulatory Planning and Review)*, 13563 (*Improving Regulation and Regulatory Review*), and 14094 (*Modernizing Regulatory Review*)

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

E.O. 14094 amends section 3(f)(1) of E.O. 12866 to define a “significant regulatory action” as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$200 million or more in any 1 year (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way the economy, a sector of

the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case. A regulatory impact analysis (RIA) must be prepared for regulatory actions with significant effects (\$200 million or more in any 1 year). This rule has been determined “nonsignificant” under E.O. 12866.

(2) Congressional Review Act

This final rule is not a major rule under the Congressional Review Act (5 U.S.C. 801 *et seq.*).

(3) Executive Order No. 13132

This rule will not have a substantial direct effect on the states, on the relationships between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not contain policies that have federalism implications.

(4) Regulatory Flexibility Act

The rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Further, the rule incorporates administrative changes to 2 CFR 700 and does not add any new requirements on USAID recipients or subrecipients. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

(5) Paperwork Reduction Act

This rule does not establish a new collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 2 CFR Part 700

Administration of Federal financial assistance, Administrative practice and procedure, Federal financial assistance programs.

■ For the reasons discussed in the preamble, USAID revises and republishes 2 CFR Part 700 as follows:

PART 700—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—Acronyms and Definitions

Sec.

700.0 Acronyms.

700.1 Definitions.

Subpart B—General Provisions

700.2 Adoption of 2 CFR Part 200.

700.3 Applicability.

700.4 Exceptions.

700.5 Supersession.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

700.6 Metric system of measurement.

700.7 Advance payment.

Subpart D—Post Federal Award Requirements

700.8 Payment.

700.9 Property standards.

700.10 Cost sharing.

700.11 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

700.12 Contract provisions.

700.13 Additional provisions for awards to for-profit entities.

700.14 Award Suspension and Termination.

700.15 Disputes.

Subpart E—Cost Principles

[Reserved]

Subpart F—Audit Requirements

[Reserved]

Subpart G—USAID-Specific Requirements

700.16 Marking.

Authority: Sec. 621, Public L. 87–195, 75 Stat 445, (22 U.S.C. 2381) as amended, E.O. 12163, Sept 29, 1979, 44 FR 56673; 2 CFR 1979 Comp., p. 435.

Subpart A—Acronyms and Definitions

§ 700.0 Acronyms.

[Reserved]

§ 700.1 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

Agreement Officer means a person with the authority to enter into, administer, terminate, and closeout assistance agreements subject to this part, and make related determinations and findings on behalf of USAID. An Agreement Officer can only act within the scope of a duly authorized warrant

or other valid delegation of authority. The term “Agreement Officer” includes persons warranted as “Grant Officers” and certain authorized representatives of the Agreement Officer acting within the limits of their authority as delegated by the Agreement Officer.

An *apparently successful applicant* means the applicant for USAID funding that the Agreement Officer recommends for an award after merit review, but who has not yet been awarded a grant, cooperative agreement or other assistance award. Apparently successful applicant status confers no right and constitutes no USAID commitment to an award, which still must be executed by the Agreement Officer.

Award has the same meaning as *Federal award* as defined in 2 CFR 200.1.

Commodities mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and non-deliverable items for recipient’s internal use in administration of the USAID-funded grant, cooperative agreement, or other agreement or subaward.

End date means the date on which the recipient or subrecipient completes all work under an award or the date on the award document, or any supplement or amendment, on which USAID sponsorship ends.

Program means the organized set of activities directed toward a common purpose, objective, or goal that a recipient or subrecipient undertakes or proposes.

Suspension means an action by USAID that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to resume or terminate the award. Suspension of an award is a separate action from suspension under USAID regulations implementing E.O.s 12549 and 12689, “Debarment and Suspension.” See 2 CFR part 780.

USAID means the United States Agency for International Development.

Subpart B—General Provisions

§ 700.2 Adoption of 2 CFR Part 200.

Under the authority listed above, the United States Agency for International Development (USAID) adopts the Office of Management and Budget (OMB) guidance for Federal Financial Assistance (subparts A through F of 2 CFR part 200), as supplemented by this part, as the USAID policies and procedures for Federal financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to

the OMB guidance as supplemented by this part.

§ 700.3 Applicability.

(a) Subparts A through D of 2 CFR part 200 apply to for-profit entities located in the United States or its territories. The Federal Acquisition Regulation (FAR) at 48 CFR part 30, Cost Accounting Standards, and Part 31, Contract Cost Principles and Procedures, takes precedence over the cost principles in Subpart E for Federal awards to U.S. for-profit entities.

(b) Subpart E applies to foreign organizations and foreign public entities, except where the Federal agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the laws of a foreign government. The Federal Acquisition Regulation (FAR) at 48 CFR part 30, Cost Accounting Standards, and Part 31, Contract Cost Principles and Procedures, takes precedence over the cost principles in Subpart E for Federal awards to foreign for-profit entities.

§ 700.4 Exceptions.

Consistent with 2 CFR 200.102:

(a) USAID’s Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, may authorize exceptions on a case-by-case basis for individual federal awards, recipients, or subrecipients except where otherwise required by law or where OMB or other approval is expressly required by this Part. No case-by-case exceptions may be granted to the provisions of Subpart F—Audit Requirements of this Part.

(b) USAID’s Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, may authorize exceptions, on a class or an individual case basis, to USAID program specific assistance regulations other than those which implement statutory and executive order requirements.

(c) The Federal agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, required by Federal statutes, or regulations except for the requirements in Subpart F—Audit Requirements of this part. The Federal agency may apply less restrictive requirements when making awards at or below the simplified acquisition threshold, or when making fixed amount awards as defined in Subpart A—Acronyms and Definitions of 2 CFR part 200, except for those requirements imposed by statute or in Subpart F—Audit Requirements of this part.

§ 700.5 Supersession.

Effective December 26, 2014, this part supersedes the following regulations under *Title 22 of the Code of Federal Regulations*: 22 CFR part 226, “Administration of Assistance Awards To U.S. Non-Governmental Organizations.”

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 700.6 Metric system of measurement.

(a) The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce.

(b) Wherever measurements are required or authorized, the recipient must make, compute, and record in metric system units of measurement, unless the Agreement Officer authorizes in writing that such usage is impractical or is likely to cause U.S. firms to experience significant inefficiencies or the loss of markets. Where the metric system is not the predominant standard for a particular application, the recipient may express the measurements in both the metric and the traditional equivalent units, provided the metric units are listed first.

§ 700.7 Advance payment.

Advance payment mechanisms include, but are not limited to, Letter of Credit, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 205.

Subpart D—Post Federal Award Requirements

§ 700.8 Payment.

(a) Use of resources before requesting advance payments. To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments. This paragraph is not applicable to such earnings which are generated as foreign currencies.

(b) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows:

(1) Except for situations described in paragraph (b)(2) of this section, USAID does not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity.

However, the non-Federal entity must be able to account for receipt, obligation and expenditure of funds.

(2) Recipients must deposit and maintain advance payments of Federal funds in insured accounts whenever possible.

§ 700.9 Property standards.

(a) *Real property.* Unless the agreement provides otherwise, title to real property will vest in accordance with 2 CFR 200.311.

(b) *Equipment.* Unless the agreement provides otherwise, title to equipment will vest in accordance with 2 CFR 200.313.

§ 700.10 Cost sharing.

(a) “Unrecovered indirect costs” has the same meaning as in 2 CFR 200.306(c).

(b) Unrecovered indirect costs, including indirect costs on cost sharing, may be included as part of cost sharing.

§ 700.11 Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms.

(a) To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act of 1961, as amended, to give United States small business firms an opportunity to participate in supplying commodities and services procured under the award, the recipient should provide the following information to the Office of Small Disadvantaged Business Utilization (OSDBU), USAID, Washington, DC 20523, at least 45 days prior to placing any order or contract in excess of the simplified acquisition threshold:

- (1) Brief general description and quantity of goods or services;
- (2) Closing date for receiving quotations, proposals or bids; and
- (3) Address where solicitations or specifications can be obtained.

(b) [Reserved]

§ 700.12 Contract provisions.

(a) The recipient or subrecipient’s contracts must contain the applicable provisions described in Appendix II to Part 200.

(b) All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by the recipient or subrecipient must include a provision to the effect that the recipient or subrecipient, USAID, the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of

making audits, examinations, excerpts and transcriptions.

§ 700.13 Additional provisions for awards to for-profit entities.

(a) This paragraph contains additional provisions that apply to awards to for-profit entities. These provisions supplement and make exceptions for awards to for-profit entities from other provisions of this part.

(1) Prohibition against profit. The agency or pass-through entity will not provide funds as profit to any for-profit entity receiving or administering Federal financial assistance as a recipient or subrecipient. Federal financial assistance does not include contracts as defined at 2 CFR 200.1, other contracts a Federal agency uses to buy goods or services from a contractor, or contracts to operate Federal government owned, contractor operated facilities (GOCOs). Profit is any amount in excess of allowable direct and indirect costs.

(2) [Reserved]

(b) [Reserved]

§ 700.14 Award Suspension and Termination.

If at any time USAID determines that continuation of all or part of the funding for a program should be suspended or terminated because such assistance would not be in the national interest of the United States or would be in violation of an applicable law, then USAID may, following notice to the recipient, suspend or terminate the award in whole or in part and prohibit the recipient from incurring additional obligations chargeable to the award other than those costs specified in the notice of suspension. If a suspension is put into effect and the situation causing the suspension continues for 60 calendar days or more, then USAID may terminate the award in whole or in part on written notice to the recipient and cancel any portion of the award which has not been disbursed or irrevocably committed to third parties.

§ 700.15 Disputes.

(a) The USAID Agreement Officer will decide any dispute under or relating to Federal financial assistance. The Agreement Officer must furnish the recipient a written copy of the decision.

(b) Decisions of the USAID Agreement Officer will be final unless, within 30 calendar days of receipt of the decision, the recipient appeals the decision to USAID’s Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy. Appeals must be in writing with a copy concurrently furnished to the Agreement Officer.

(c) In order to facilitate review of the record by the USAID’s Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, the recipient will be given an opportunity to submit written evidence in support of its appeal. No hearing will be provided.

(d) Decisions by the Assistant Administrator, Bureau for Management, or designee as delegated in Agency policy, will be final.

Subpart E—Cost Principles

[Reserved]

Subpart F—Audit Requirements

[Reserved]

Subpart G—USAID-Specific Requirements

§ 700.16 Marking.

(a) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Activity* means a set of a recipient or subrecipient’s actions using resources—such as commodities, technical assistance, or training to produce specific results, such as vaccinations given, schools built, microenterprise loans issued, or policies changed. The recipient or subrecipient undertakes activities to achieve the formally approved objectives of the award.

(2) *Branding strategy* means a strategy the apparently successful applicant or recipient submits describing how they will name and position the program, project, or activity and how they will promote and communicate it to beneficiaries and cooperating country citizens. In the branding strategy, the apparently successful applicant or recipient identifies all donors and explains how they will be acknowledged.

(3) *Marking plan* means a plan that the apparently successful applicant or recipient submits after merit review of an application for USAID funding, detailing the public communications, commodities, and program materials and other items that will visibly bear the USAID Identity.

(4) *Public communications* are documents and messages the recipient or subrecipient intends to distribute to external audiences. They include, but are not limited to, correspondence, publications, studies, reports, audio-visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID-funded programs, projects or activities,

including signage and plaques; websites/internet activities; and events such as training courses, conferences, seminars, and press conferences.

(5) *USAID Identity* (Identity) means the official marking for the United States Agency for International Development (USAID) comprised of the USAID logo or seal and new brandmark with the tagline that clearly communicates our assistance is “from the American people.” Upon a written determination by the USAID Administrator, or delegate, the definition of the USAID Identity may be amended to include additional or substitute use of a logo or seal and tagline representing a presidential initiative or other high level interagency Federal initiative that requires consistent and uniform branding and marking by all participating agencies. The USAID Identity (including any required additional insignia or related identity) is available on the USAID website at <https://www.usaid.gov/branding> and is provided without royalty, license or other fee to recipients of USAID funded grants or cooperative agreements or other assistance awards.

(6) *Principal officer* means the most senior officer in an USAID Operating Unit in the field, for example, a USAID Mission Director or USAID Representative. For global programs managed from Washington but executed across many countries, such as disaster relief programs and assistance to internally displaced persons, humanitarian emergencies or immediate post conflict and political crisis responses, the cognizant Principal Officer may be an Office Director, for example, the Directors of USAID/W/ Office of Foreign Disaster Assistance and Office of Transition Initiatives. For non-presence countries, the cognizant Principal Officer is the Senior USAID officer in a regional USAID Operating Unit responsible for the non-presence country, or in the absence of such a responsible operating unit, the Principal U.S Diplomatic Officer in the non-presence country exercising delegated authority from USAID.

(b) USAID policy is that a recipient or subrecipient must mark all programs, projects, activities, public communications, and commodities, specified further at paragraphs (d) through (g) of this section, partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward with the USAID Identity, of a size and prominence equivalent to or greater than the recipient's, other donor's or any other third party's identity or logo.

(1) USAID reserves the right to require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant; any such requirement will be on a case-by-case basis depending on the audience, program goals and materials produced.

(2) USAID reserves the right to request pre-production review of USAID funded public communications and program materials for compliance with the approved Marking Plan.

(3) USAID reserves the right to require marking with the USAID Identity in the event the recipient does not choose to mark with its own identity or logo.

(4) Recipients of USAID funded grants and cooperative agreements or other assistance awards must include a USAID-approved marking provision in any USAID funded subaward, to read as follows:

As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity.

(c) Subject to § 700.16(b), (i), and (k), the recipient or subrecipient must mark program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management), with the USAID Identity. The recipient or subrecipient should erect temporary signs or plaques early in the construction or implementation phase. When construction or implementation is complete, the recipient or subrecipient must install a permanent, durable sign, plaque or other marking.

(d) Subject to § 700.16(b), (i), and (k), the recipient or subrecipient must mark technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, websites/internet activities and other promotional, informational, media, or communications products funded by USAID with the USAID Identity.

(1) Any “public communications” as defined in § 700.1, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.

(2) The recipient must provide the Agreement Officer's Representative (AOR) or other USAID personnel designated in the grant or cooperative agreement with at least two copies of all program and communications materials produced under the award. In addition, the recipient must submit one electronic and/or one hard copy of all final documents to USAID's Development Experience Clearinghouse.

(e) Subject to § 700.16(b), (i), and (k), the recipient or subrecipient must mark events financed by USAID such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials such as signs and banners with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, recipients should otherwise acknowledge USAID and the American people's support.

(f) Subject to § 700.16(b), (i), and (k), the recipient or subrecipient must mark all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies and other materials funded by USAID, and their export packaging, with the USAID Identity.

(g) After merit review of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Branding Strategy, defined in § 700.1. The proposed Branding Strategy will not be evaluated competitively. The Agreement Officer will review the proposed Branding Strategy for adequacy, and will negotiate, approve and include the Branding Strategy in the award. The Agreement Officer will specify the timeline for submission in the Notice of Funding Opportunity. If the Notice of Funding Opportunity indicates that the apparently successful applicant may submit a Branding Strategy after the award is made, the Agreement Officer must include a special award condition to indicate the required submission date. If the Agreement Officer requires submission before award, failure to submit or

negotiate a Branding Strategy within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award.

(h) After merit review of applications for USAID funding, USAID Agreement Officers will request apparently successful applicants to submit a Marking Plan, defined in § 700.1. The Marking Plan may include requests for approval of Presumptive Exceptions, paragraph (i) of this section. The apparently successful applicant must include all estimated costs associated with branding and marking USAID programs, such as plaques, labels, banners, press events, promotional materials, and the like, in the total cost estimate of the grant or cooperative agreement or other assistance award. These costs are subject to revision and negotiation with the Agreement Officer upon submission of the Marking Plan. The Marking Plan will not be evaluated competitively. The Agreement Officer will review the proposed Marking Plan for adequacy, and will negotiate, approve and include the Marking Plan in the award. The Agreement Officer will specify the timeline for submission in the Notice of Funding Opportunity. If the Notice of Funding Opportunity indicates that the apparently successful applicant may submit a Marking Plan after the award is made, the Agreement Officer must include a special award condition to indicate the required submission date. If the Agreement Officer requires submission before award, failure to submit or negotiate a Marking Plan within the time specified by the Agreement Officer will make the apparently successful applicant ineligible for award. Agreement Officers have the discretion to suspend the implementation requirements of the Marking Plan if circumstances warrant. Recipients of a USAID funded grant or cooperative agreement or other assistance award or subaward should retain copies of any specific marking instructions or waivers in their project, program or activity files.

(i) Presumptive exceptions:

(1) The above marking requirements in § 700.16(b) through (f) may not apply if marking would:

(i) Compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials, such as election monitoring or ballots, and voter information literature; political party support or public policy advocacy or reform; independent media, such as television and radio broadcasts, newspaper articles and editorials;

public service announcements or public opinion polls and surveys.

(ii) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent.

(iii) Undercut host-country government “ownership” of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as “by” or “from” a cooperating country ministry or government official.

(iv) Impair the functionality of an item, such as sterilized equipment or spare parts.

(v) Incur substantial costs or be impractical, such as items too small or other otherwise unsuited for individual marking, such as food in bulk.

(vi) Offend local cultural or social norms, or be considered inappropriate on such items as condoms, toilets, bed pans, or similar commodities.

(vii) Conflict with international law.

(2) The Agreement Officer must approve these exceptions. Apparently successful applicants may request approval of one or more of the presumptive exceptions, depending on the circumstances, in their Marking Plan. The Agreement Officer will review requests for presumptive exceptions for adequacy, along with the rest of the Marking Plan. When reviewing a request for approval of a presumptive exception, the Agreement Officer may review how program materials will be marked (if at all) if the USAID identity is removed. Exceptions approved will apply to subrecipients unless otherwise provided by USAID.

(j) In cases where the recipient does not comply with the Marking Plan, the Agreement Officer will initiate corrective action. Such action may involve informing the recipient of a USAID grant or cooperative agreement or other assistance award or subaward of instances of noncompliance and requesting that the recipient carry out its responsibilities as set forth in the Marking Plan and award. Major or repeated non compliance with the Marking Plan will be governed by the uniform suspension and termination procedures set forth at 2 CFR 200.340 through 2 CFR 200.343, and 2 CFR 700.14.

(k) (1) *Waivers*. USAID Principal Officers may at any time after award waive in whole or in part the USAID approved Marking Plan, including USAID marking requirements for each USAID funded program, project, activity, public communication or commodity, or in exceptional

circumstances may make a waiver by region or country, if the Principal Officer determines that otherwise USAID required marking would pose compelling political, safety, or security concerns, or marking would have an adverse impact in the cooperating country. USAID recipients may request waivers of the Marking Plan in whole or in part, through the AOR. No marking is required while a waiver determination is pending. The Principal Officer must make the waiver determination on safety or security grounds in consultation with U.S. Government security personnel if available, and must consider the same information that applies to determinations of the safety and security of U.S. Government employees in the cooperating country, as well as any information supplied by the AOR or the recipient for whom the waiver is sought. When reviewing a request for approval of a waiver, the Principal Officer may review how program materials will be marked (if at all) if the USAID Identity is removed. Approved waivers are not limited in duration but are subject to Principal Officer review at any time due to changed circumstances. Approved waivers “flow down” to recipients of subawards unless specified otherwise. Principal Officers may also authorize the removal of USAID markings already affixed if circumstances warrant. Principal Officers’ determinations regarding waiver requests are subject to appeal to the Principal Officer’s cognizant Assistant Administrator. Recipients may appeal by submitting a written request to reconsider the Principal Officer’s waiver determination to the cognizant Assistant Administrator.

(2) *Non-retroactivity*. Marking requirements apply to any obligation of USAID funds for new awards as of January 2, 2006. Marking requirements also will apply to new obligations under existing awards, such as incremental funding actions, as of January 2, 2006, when the total estimated cost of the existing award has been increased by USAID or the scope of effort is changed to accommodate any costs associated with marking. In the event a waiver is rescinded, the marking requirements will apply from the date forward that the waiver is rescinded. In the event a waiver is rescinded after the period of performance but before closeout as defined in 2 CFR 200.1, the USAID mission or operating unit with initial responsibility to administer the marking requirements must make a cost benefit analysis as to requiring USAID marking requirements after the end date of the

affected programs, projects, activities, public communications or commodities.

(1) USAID will provide the USAID Identity and other guidance at no cost or fee to recipients of USAID grants, cooperative agreements or other assistance awards or subawards. USAID will fund additional costs associated with marking requirements if reasonable, allowable, and allocable under 2 CFR part 200, subpart E. Recipients must follow the standard cost reimbursement provisions of the grant, cooperative agreement, other assistance award or subaward when applying for reimbursement of additional marking costs.

Jami J. Rodgers,
Chief Acquisition Officer.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–SC–23–0040]

Onions Grown in South Texas; Redistricting and Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the South Texas Onion Committee (Committee) to reestablish the districts in the production area and reapportion representation on the Committee. This action reduces the number of districts from two to one and reapportions membership to reflect changes in the industry, provide equitable representation on the Committee, and create the opportunity for more producers and handlers to serve on the Committee.

DATES: Effective September 3, 2024.

FOR FURTHER INFORMATION CONTACT: Delaney Fuhrmeister, Marketing Specialist, or Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: Delaney.Fuhrmeister@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237,

Washington, DC 20250–0237; Telephone: (202) 720–8085, Fax: (202) 720–8938, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions in South Texas. Part 959 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of producers and handlers of onions operating within the production area.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has been reviewed under Executive Order 12988—Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under sec.

608c(15)(A) of the Act, any handler subject to an order may file with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule redistricts and reapportions the membership of the Committee as prescribed under the Order. This rule consolidates the current two districts into a single district and reapportions all Committee membership to the single district. These actions reflect changes in the industry, will help provide equitable representation on the Committee and create opportunity for more producers and handlers to serve on the Committee. Further, these changes will better enable Committee staff to conduct nominations and ensure the appointment of a full Committee, allowing for an easier achievement of quorum at assembled meetings. The Committee unanimously recommended these changes when meeting on June 8, 2023.

Section 959.22 of the Order provides for the establishment of membership on the Committee and states that the Committee shall consist of thirteen members, eight of whom shall be producers and five of whom shall be handlers. Each member shall have an alternate.

Section 959.24 currently defines the counties in Texas that make up District No. 1 and District No. 2 for the purpose of selecting Committee members. Section 959.26 specifies that District No. 1 is represented by five producer members and alternates and three handler members and alternates, and District No. 2 is represented by three producer members and alternates and two handler members and alternates.

Section 959.25 authorizes the Committee to recommend, with the approval of the Secretary, reapportionment of members among districts, and the reestablishment of districts within the production area. This section also provides that, in making such recommendations, the Committee shall consider shifts in onion acreage or production within the districts, the importance of new