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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.

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DEPARTMENT OF AGRICULTURE

2 CFR Chapter IV

[Docket No. USDA–2024–0002]

RIN 0505–AA18

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

AGENCY: Office of the Chief Financial Officer, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is revising parts of the USDA Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. USDA's revision provides policy changes and clarifications including plain language revisions. These revisions are intended in many cases to reduce agency and recipient burden.

DATES: This rule is effective on October 1, 2024.

FOR FURTHER INFORMATION CONTACT:

Tyson P. Whitney, Office of the Chief Financial Officer, Director, Transparency and Accountability Reporting Division, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–9011, 202–720–8978, tyson.whitney@usda.gov.

Individuals who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The regulations found at 2 CFR Chapter IV provide the USDA adoption of subparts A through F of 2 CFR part 200, as supplemented by USDA-specific exceptions and requirements. 2 CFR Chapter IV additionally includes the regulatory implementation of several statutory requirements which provide USDA-wide applicability.

On July 1, 2024, USDA published a proposed rule to provide conforming updates to OMB's April 22, 2024 updates to 2 CFR part 200, implement plain language use, and to propose revisions intended in many cases to reduce agency and recipient burden. USDA proposed both policy changes and clarifications to existing requirements. See 89 FR 54372. A correction was published to clarify that the public comment period extended through July 31, 2024. See 89 FR 55114.

USDA solicited comments concerning the proposed rule ending July 31, 2024, and received one comment by that date. An anonymous submitter requested that USDA prioritize environmental protection due to concern over costs from damages to public lands and the environment from commercial operations. The submitter also requested that USDA only provide grants for research or projects that reduce fossil fuel production and consumption. As this regulation does not propose specific environmental regulations, describe specific program activities that would impact public lands, or authorize specific USDA grant programs, the public comment is not relevant to the regulations and will not be addressed in the regulatory text.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 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. The assessment should include potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this proposed rule as not significant under Executive Order 12866, "Regulatory Planning and Review," and therefore, OMB has not reviewed it.

Executive Order 12988

This proposed rule has been reviewed under E.O. 12988 on "Civil Justice Reform." This proposed rule would not preempt state or local laws, regulations, or policies unless they represent an irreconcilable conflict with it.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department

of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: *program.intake@usda.gov*.

USDA is an equal opportunity provider, employer, and lender.

List of Subjects

2 CFR Part 400

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

2 CFR Part 401

Federal financial assistance programs, Construction Industry

2 CFR Part 415

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

2 CFR Part 416

Agriculture programs, Administration of Federal financial assistance, Administrative practice and procedure, Government procurement procedure

2 CFR Part 417

Administrative practice and procedure; Grant programs; Loan programs; Reporting and recordkeeping requirements

2 CFR Part 418

Lobbying procedures, Administration of Federal financial assistance, Government procurement procedure

2 CFR Part 421

Administration of Federal financial assistance, Administrative practice and procedure, Drugs

2 CFR Part 422

Agricultural research, Administration of Federal financial assistance, Administrative practice and procedure

2 CFR Part 423

Reporting and recordkeeping requirements, Administration of Federal financial assistance

Accordingly, USDA amends 2 CFR Chapter IV as follows:

- 1. Revise part 400 to read as follows:

PART 400—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

400.0 Definitions.

400.1 Applicability.

400.2 Conflict of interest.

Authority: 5 U.S.C. 301; 2 CFR part 200.

§ 400.0 Definitions.

The definitions in this part are for terms used in this chapter, and to define for USDA terms present in 2 CFR Subtitle A but not defined in that subtitle. Different definitions may be found in Federal statutes, regulations, or other sources that apply more specifically to particular programs or activities. Where parts of this chapter provide alternate definitions than those in this part, those definitions take precedence over any definition in this part. For terms used in this chapter that are not defined in this part, the definitions in 2 CFR part 200 apply. All terms not otherwise defined will use the dictionary definition.

Audiovisual means a product containing visual imagery or sound or both. Examples of audiovisuals are motion pictures, live or prerecorded radio or television programs, slide shows, filmstrips, audio recordings, and multimedia presentations.

Awarding official means a person with the authority to enter into, administer, and/or terminate financial assistance awards and make related determinations and findings.

Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. For the purposes of 2 CFR part 184, construction also encompasses structures, facilities, and equipment incorporated into an infrastructure project regardless of whether they constitute real property.

Department means the U.S. Department of Agriculture.

Discretionary award means an award in which the Federal awarding agency, in keeping with specific statutory authority that enables the agency to exercise judgment (“discretion”), selects the recipient and/or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected by a USDA awarding agency on a non-competitive basis exclusively under the conditions set forth at 2 CFR 415.1.

Eligible applications means those materials which have been submitted by a recipient for consideration for an

award of Federal financial assistance and have been determined to comply with the minimum documentation and other requirements, which may be identified in respective notices of funding opportunities and applicable Federal statutes or regulations that apply more specifically to particular programs or activities.

Federal financial assistance support means the transfer of anything of value by a USDA awarding agency through a Federal financial assistance instrument as defined at 2 CFR part 200.1, inclusive of Federally funded subawards and subcontracts under such instruments, to a recipient. Such support may be provided as a cash or in-kind contribution.

Geospatial data means information that is tied to a location on the Earth, including by identifying the geographic location and characteristics of natural or constructed features and boundaries on the Earth, and that is generally represented in vector datasets by points, lines, polygons, or other complex geographic features or phenomena; may be derived from, among other things, remote sensing, mapping, and surveying technologies; includes images and raster datasets, aerial photographs, and other forms of geospatial data or datasets in digitized or non-digitized form.

Information means any communication or representation of knowledge, such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.

Information dissemination product means any recorded information, regardless of physical form or characteristics, disseminated to the public.

Maintenance means those activities conducted for the repair or upkeep of buildings, structures, facilities, and equipment which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition.

Production of an audiovisual means any steps that lead to a finished audiovisual, including but not limited to design, layout, script-writing, filming, editing, fabrication, sound recording or taping. The term does not include the placing of captions to make accessible films or videotapes not originally produced for use by individuals who are Deaf or hard of hearing.

Secretary means the Secretary of the U.S. Department of Agriculture.

USDA means the U.S. Department of Agriculture.

USDA awarding agency means any component agency or staff office of the U.S. Department of Agriculture which provides any Federal financial assistance to or executes a Federal financial assistance instrument with a recipient.

§ 400.1 Applicability.

This part adopts the OMB guidance in subparts A through F of 2 CFR part 200, as supplemented by this chapter, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this chapter.

§ 400.2 Conflict of interest.

(a) Each USDA awarding agency must establish conflict of interest policies for its Federal financial assistance actions. Each USDA awarding agency employee must comply with the requirements set forth at 5 CFR part 2635, as well as 5 CFR part 8301 where applicable, when the USDA employee takes any action related to Federal financial assistance.

(b) Recipients must disclose in writing any potential conflicts of interest to the USDA awarding agency or pass-through entity.

(1) Recipients must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees in the selection, award and administration of Federal awards. No employee, officer or agent may participate in the selection, award, or administration of a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a Federal award. The recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

(2) If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because

of the relationships with a parent company, affiliate, or subsidiary organization, the recipient is unable or appears to be unable to be impartial in conducting a Federal award action involving a related organization.

(3) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. Recipients are responsible for notifying the respective USDA awarding agency in writing of any conflicts of interest that may arise during the period of performance of an award, including those which have been reported by subrecipients, no later than 5 calendar days following discovery. Upon receipt of such a disclosure, the respective USDA awarding agency must review and make a determination in writing if a potential or real conflict of interest exists and develop a plan for addressing or mitigating the issue, which may include remedies found at 2 CFR 200.339. USDA awarding agencies must make a determination within 30 calendar days of disclosure unless a longer period of time is necessary due to the complexity of the situation.

■ 2. Add part 401 to read as follows:

PART 401—BUY AMERICA PREFERENCES FOR INFRASTRUCTURE PROJECTS

Sec.

401.1 What does this part do?

401.2 Waivers.

Authority: 5 U.S.C. 301; Pub. L. 117–58, 135 Stat. 1294; 2 CFR part 184; 2 CFR part 200.

§ 401.1 What does this part do?

This part identifies the USDA policy for the implementation of waivers to the domestic content procurement preferences as required by 2 CFR 184.7(b).

§ 401.2 Waivers.

On its public website, USDA must maintain waiver request submission instructions and guidance on the format, contents, and supporting materials required for waiver requests by which:

(a) USDA awarding agencies may request waivers to the application of the Buy America Preference; and,

(b) Prime recipients and subrecipients may request project-specific waivers from the respective USDA awarding agencies to the application of the Buy America Preference.

■ 3. Revise part 415 to read as follows:

PART 415—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS

Sec.

Subpart A—Application for Federal Assistance

415.1 Administrative standards for discretionary grants and cooperative agreements.

Subpart B—Miscellaneous

415.2 Acknowledgement of USDA Support on Information Dissemination Products.

Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities

415.3 Purpose.

415.4 Definitions.

415.5 Applicability.

415.6 Secretary's general responsibilities.

415.7 Federal interagency coordination.

415.8 State selection of programs and activities.

415.9 Communication with State and local elected officials.

415.10 State comments on proposed Federal financial assistance and direct Federal development.

415.11 Processing comments.

415.12 Accommodation of intergovernmental concerns.

415.13 Interstate situations.

415.14 Simplification, consolidation, or substitution of State plans.

415.15 Waivers.

Authority: 5 U.S.C. 301; 31 U.S.C. 901–903; 2 CFR part 200; 7 CFR 2.28.

Subpart A—Application for Federal Assistance

§ 415.1 Administrative standards for discretionary grants and cooperative agreements.

(a) All USDA awarding agencies must demonstrate a commitment to encouraging free and open competition in all discretionary grant and cooperative agreement funding opportunities. USDA awarding agencies must ensure that all eligible applications for discretionary grants and cooperative agreements receive fair and impartial review, be evaluated only on criteria as stated in the respective notice of funding opportunity, and that no applicant receive an unfair advantage.

(b) USDA awarding agencies must enter into discretionary grants and cooperative agreements only after competition. Exceptions to this requirement may only be made by USDA awarding agencies where expressly provided by statute, when directed by Congress, where the requirement is determined to be inconsistent with international assistance objectives of USDA, or as specified in paragraph (d) of this section or as approved by the Secretary and OMB under paragraph (e). A USDA awarding agency's competitive award process must adhere to the following standards:

(1) All notices of funding opportunities for discretionary grants and cooperative agreements must be published on *Grants.gov* as described in 2 CFR 200.204(a). When notices of funding opportunities contain an information collection requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) or its implementing regulations at 5 CFR part 1320, USDA awarding agencies must seek and obtain OMB approval before collecting information from the public.

(i) Supplementary to the requirements at paragraph (b)(1), USDA awarding agencies may make use of other methods of disseminating public information concerning notices of funding opportunities. In doing so, USDA awarding agencies must:

(A) Pursue the broadest dissemination of information concerning notices of funding opportunities in order to reach the greatest number and diversity of potential applicants.

(B) Avoid any appearance that an unfair advantage has been provided to any entity, inclusive of the memberships or networks of such entities, which may arise from the use of any dissemination method.

(C) Provide only public information concerning notices of funding opportunities.

(D) Seek the greatest cost savings to the Government, whenever possible.

(ii) Nothing in this part will be interpreted as to limit, impede, or otherwise prevent the attendance of any USDA awarding agency's staff, acting in their official capacity, at a conference, event, or similar activity, for the purposes of disseminating public information concerning notices of funding opportunities.

(2) Applications must be evaluated objectively by independent reviewers in accordance with evaluation criteria set forth in writing by the USDA awarding agency. USDA awarding agencies must establish written procedures to gain reasonable assurance that individuals selected to serve as independent reviewers are qualified to conduct any assigned review activity and that applications are scored by independent reviewers solely on the basis of criteria announced in the respective published notice of funding opportunity. Independent reviewers must make written comments or make a written determination of scoring, as appropriate, concerning each application to which they are assigned.

(i) Independent reviewers may be from the private or public sector, including another Federal agency, or within the awarding agency. Independent reviewers must not be any

individual who holds or has been delegated approval or award authority for the applications being reviewed or components thereof.

(ii) Anyone who has or might appear to have a conflict of interest with any element of an application considered for selection or funding will be ineligible to serve as an independent reviewer. A conflict of interest might arise when the prospective independent reviewer, the reviewer's immediate family members, or the reviewer's partner, have been associated with the applicant or applicant organization within the past two years as an owner, partner, officer, director, employee, or consultant; has any financial or other interest in or tangible personal benefit from the applicant or applicant organizations; or is negotiating for, or has any arrangement, concerning prospective employment.

(3) Notwithstanding this paragraph (b), unless directed by Congress or authorized by statute, USDA awarding agencies may, but are not required to, review, evaluate for eligibility, or otherwise consider for funding any unsolicited application, proposal materials, ideas, pitches, or any other request for Federal funds provided by any entity for the purpose of obtaining Federal financial assistance.

(c) The final decision to award is at the discretion of the awarding official in each USDA awarding agency. The awarding official must consider the ranking, comments, and recommendations from the respective independent reviewers, and any other pertinent information before deciding which applications to approve and their order of approval. Any appeals by applicants regarding the awarding decision must be handled by the awarding agency using existing, written agency appeal procedures.

(d) The awarding official may make a determination that competition is not deemed appropriate for a particular transaction. Such determination must be made in writing on a case-by-case basis and be limited to transactions where it can be adequately justified that a noncompetitive award is in the best interest of the Government and necessary to the accomplishment of the goals of USDA. Reasons for considering noncompetitive awards are:

(1) Nonmonetary awards of property or services.

(2) Awards of less than \$100,000.

(3) Awards to fund continuing work already started under a previous award for which competition for continued support would have a significant adverse effect on continuity or completion of the activity.

(4) Time constraints associated with a public health, safety, welfare, or national security requirement preclude competition.

(e) USDA awarding agencies may establish alternate exceptions from competition for discretionary awards. All such alternative exceptions will be subject to review and approval both by the Secretary and by OMB, pursuant to 2 CFR 200.102, and 2 CFR 200.107 when applicable, and publicly set forth in writing by the USDA awarding agency.

(f) All actions taken USDA awarding agencies for the purpose of accomplishing any element of Federal financial assistance programs, awards, and any related or subsequent transactions, must comply with the direction set forth in Office of Federal Procurement Policy (OFPP) Policy Letter 11-01 and successor policy regarding the performance of inherently governmental and critical functions.

Subpart B—Miscellaneous

§ 415.2 Acknowledgement of USDA support on information dissemination products.

Recipients must have an acknowledgement of USDA awarding agency support placed on any information dissemination products produced with any Federal financial assistance support, including those which report the results or, or describe, a Federal financial assistance-supported activity.

(a) Unless the provisions of the Federal financial assistance award make it apply, this requirement does not apply to:

(1) Audiovisuals produced as research instruments or for documenting experimentation or findings and not intended for presentation or distribution to the public.

(2) [Reserved]

(b) USDA awarding agencies must require award terms and conditions imposed for the specific purpose of complying with law, regulation, or USDA policy, related to the acknowledgement of USDA awarding agency Federal financial assistance support.

Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities

§ 415.3 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs", issued July 14, 1982, and amended on April 8, 1983. These regulations also implement applicable

provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) The regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

§ 415.4 Definitions.

As used in this part, the following definitions apply:

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled Intergovernmental Review of Federal Programs.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands.

§ 415.5 Applicability.

The Secretary must publish, no less than annually, a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. This list must be available on the USDA's public website.

§ 415.6 Secretary's general responsibilities.

(a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the Department.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably

feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing Federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for Federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

§ 415.7 Federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

§ 415.8 State selection of programs and activities.

(a) A State may select any program or activity published in the **Federal Register** or on *Grants.gov*, in accordance with § 415.5 for intergovernmental review under these regulations. Each State, before selecting programs and activities, must consult with local elected officials.

(b) Each State that adopts a process must notify the Secretary of the Department's programs and activities selected for that process.

(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State must submit to the Secretary an assurance that the State has consulted with elected local officials regarding the change. The Department may establish deadlines by which States are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a State's process as soon as feasible, depending

on individual programs and activities, after the Secretary is notified of its selections.

§ 415.9 Communication with State and local elected officials.

(a) The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or an activity that is not covered under the State process.

(b) This notice may be made by publication in the **Federal Register** or other appropriate means, which the Department in its discretion deems appropriate.

(c) In order to facilitate communication with State and local officials the Secretary has established an office within the Department to receive all communications pertinent to this Order. Communications should be sent to:

(1) The Office of the Chief Financial Officer, Room 143-W, 1400 Independence Avenue SW, Washington, DC 20250, Attention: E.O. 12372; or,

(2) As identified on the USDA's public website, an email address for electronic communications.

§ 415.10 State comments on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities:

(1) At least 30 days from the date established by the Secretary to comment on proposed Federal financial assistance in the form of noncompetitive continuation awards; and

(2) At least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance other than noncompetitive continuation awards.

(b) This section also applies to comments in cases in which the review, coordination and communication with the Department have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act must allow areawide agencies a 60-day opportunity for review and comment.

§ 415.11 Processing comments.

(a) The Secretary follows the procedures in § 415.12 if:

(1) A State office or official is designated to act as a single point of

contact between a State process and all Federal agencies; and

(2) That office or official transmits a State process recommendation for a program selected under § 415.8.

(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department.

(d) If a program or activity is not selected by a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to the Department. In addition, if a State process recommendation for a non-selected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 415.12.

(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 415.12, when such comments are provided by a single point of contact by the applicant, or directly to the Department by a commenting party.

§ 415.12 Accommodation of intergovernmental concerns.

(a) If a State process provides a State process recommendation to the Department through its single point of contact, the Secretary either—

- (1) Accepts the recommendations;
- (2) Reaches a mutually agreeable solution with the State process; or
- (3) Provides the single point of contact with a written explanation of the decision, as determined by the Secretary. The Secretary may also supplement the written explanation by also providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

- (1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

§ 415.13 Interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials in States which have adopted a process and which selected the Department's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional and local officials and entities in those States that have not adopted a process under the Order or do not select the Department's program or activity; and

(4) Responding, pursuant to § 415.12, if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in § 415.12 if a State process provides a State process recommendation to the Department through a single point of contact.

§ 415.14 Simplification, consolidation, or substitution of State plans.

(a) As used in this section:

(1) Simplify means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) Consolidate means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and the planning period for the consolidated plan.

(3) Substitute means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute Federally required State plans without prior approval by the Secretary.

(c) The Secretary reviews each State plan a State has simplified, consolidated or substituted and accepts the plan only if its contents meet Federal requirements.

§ 415.15 Waivers.

In an emergency, the Secretary may waive any provision in Subpart C—Intergovernmental Review of Department of Agriculture Programs and Activities, 2 CFR 415.3 to 415.14.

■ 4. Revise part 416 to read as follows:

PART 416—GENERAL PROGRAM ADMINISTRATIVE REGULATIONS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Sec.

416.1 Special procurement provisions.

416.2 [Reserved]

Authority: 5 U.S.C. 301; 31 U.S.C. 901–903; 7 CFR 2.28.

§ 416.1 Special procurement provisions.

(a) In order to ensure objective contractor performance and eliminate unfair competitive advantage, a prospective contractor that develops or drafts specifications, requirements, statements of work, invitations for bids, request for proposals, contract term and conditions or other documents for use by a State in conducting a procurement under the USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) must be excluded from competing for such procurements. Such prospective contractors are ineligible for contract awards resulting from such procurements regardless of the procurement method used. However, prospective contractors may provide States with specification information related to a State procurement under the USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) and still compete for the procurement if the State, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement.

(b) Procurements by States under USDA entitlement programs specified in 2 CFR 200.101(f)(4) through (7) must be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences.

§ 416.2 [Reserved]

■ 5. Revise part 417 to read as follows:

PART 417—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

417.10 What does this part do?

417.20 Does this part apply to me?

417.30 What policies and procedures must I follow?

Subpart A—General

417.137 Who in the USDA may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

417.210 Which nonprocurement transactions are covered transactions?

417.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

417.220 Are any procurement contracts included as covered transactions?

417.221 How would the exclusions from coverage for the USDA's foreign assistance programs apply?

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Subpart C—Responsibilities of Participants Regarding Transactions

417.332 What methods must I use to pass down requirements to participants in lower-tier covered transactions with whom I intend to do business?

Subpart D—Responsibilities of Department of Agriculture Officials Regarding Transactions

417.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subpart E—[Reserved]**Subpart F—[Reserved]****Subpart G—Suspension**

417.755 When will I know whether the USDA suspension is continued or terminated?

Subpart H—Debarment

417.865 How long may my debarment last?

417.870 When do I know if the USDA debarring official debars me?

Subpart I—Definitions

417.930 Debarring official (USDA supplement to government-wide definition at 2 CFR 180.930).

417.935 Disqualified (USDA supplement to government-wide definition at 2 CFR 180.935).

417.1010 Suspending official (USDA supplement to government-wide definition at 2 CFR 180.1010).

Subpart J—[Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 2209j; Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); Pub. L. 101–576, 104 Stat. 2838; E.O. 12549 (51 FR 6370, 3 CFR, 1986 Comp., p. 189); E.O. 12689 (54 FR 34131, 3 CFR, 1989 Comp., p. 235); 2 CFR part 180; 7 CFR 2.28.

§ 417.10 What does this part do?

This part adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the USDA policies and procedures for nonprocurement debarment and

suspension. It thereby gives regulatory effect for the USDA to the OMB guidance, as supplemented by this part. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, USDA policies and procedures are those in the OMB guidance. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR, 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 417.20 Does this part apply to me?

Through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a:

(a) Participant or principal in a “covered transaction” (see subpart B of 2 CFR part 180 and the definition of “nonprocurement transaction” at 2 CFR 180.970, as supplemented by §§ 417.215 and 417.220);

(b) Respondent in a USDA debarment and suspension action;

(c) USDA debarment or suspension official; or

(d) USDA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 417.30 What policies and procedures must I follow?

The USDA policies and procedures that you must follow are the policies and procedures specified in this regulation and each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by 2 CFR 180.220 as supplemented by § 417.220. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, USDA policies and procedures are those in the OMB guidance.

Subpart A—General**§ 417.137 Who in the USDA may grant an exception to let an excluded person participate in a covered transaction?**

Within the USDA, a debarring official may grant an exception to let an excluded person participate in a covered transaction as provided under 2 CFR 180.135.

Subpart B—Covered Transactions**§ 417.210 Which nonprocurement transactions are covered transactions?**

All nonprocurement transactions, as defined in 2 CFR 180.970, are covered transactions unless listed in § 417.215.

§ 417.215 Which nonprocurement transactions, in addition to those listed in 2 CFR 180.215, are not covered transactions?

(a) *Transactions not covered.* In addition to the nonprocurement transactions listed in 2 CFR 180.215, the following nonprocurement transactions are not covered transactions:

(1) An entitlement or mandatory award required by a statute, including a lower tier entitlement or mandatory award that is required by a statute.

(2) The export or substitution of Federal timber governed by the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (The “Export Act”), which prevents a debarred person from entering into any contract for the purchase of unprocessed timber from Federal lands. See 16 U.S.C. 620d(d)(1)(A).

(3) The receipt of licenses, permits, certificates, and indemnification under regulatory programs conducted in the interest of public health and safety, and animal and plant health and safety.

(4) The receipt of official grading and inspection services, animal damage control services, public health and safety inspection services, and animal and plant health and safety inspection services.

(5) If the person is a State or local government, the provision of official grading and inspection services, animal damage control services, animal and plant health and safety inspection services.

(6) The receipt of licenses, permits, or certificates under regulatory programs conducted in the interest of ensuring fair trade practices.

(7) Permits, licenses, exchanges and other acquisitions of real property, rights of way, and easements under natural resource management programs.

(8) Any transaction to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program.

(9) Any transaction to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program.

(b) *Limited requirement to check SAM.gov.* Notwithstanding the fact that transactions to be implemented outside

the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or direct credit program are not covered transactions, pursuant to paragraphs (a)(8) and (9) of this section, primary tier participants under these programs must check *SAM.gov* prior to entering into any transaction with a person at the first lower tier and must not enter into such a transaction if the person is excluded or disqualified in *SAM.gov*.

(c) *Exception.* A cause for suspension or debarment under 2 CFR 180.700 or 2 CFR 180.800 may be based on the actions of a person with respect to a procurement or nonprocurement transaction under a USDA program even if such transaction has been excluded from covered transaction status by this section or § 417.220.

§ 417.220 Are any procurement contracts included as covered transactions?

In addition to the procurement contracts listed in 2 CFR 180.220, the following procurement contracts are covered transactions:

(a) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction covered under § 417.210, and the contract amount is expected to equal or exceed \$25,000.

(2) [Reserved]

(b) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA foreign assistance program is not a covered transaction, notwithstanding the provisions in 2 CFR 180.220(a) and 2 CFR 180.220(b) and paragraph (a) of this section.

(c) Any procurement contract to be implemented outside the United States that is below the primary tier covered transaction in a USDA export credit guarantee program or direct credit program is not a covered transaction, notwithstanding the provisions in 2 CFR 180.220(a) and 2 CFR 180.220(b) and paragraph (a) of this section.

(d) Notwithstanding the fact that procurement contracts to be implemented outside the United States that are below the primary tier covered transaction in a USDA foreign assistance program, export credit guarantee program or direct credit program are not covered transactions, pursuant to paragraph (b) and (c) of this section, primary tier participants under these programs must check *SAM.gov* prior to entering into any procurement contract that is expected to equal or exceed \$25,000 with a person at the first lower

tier and must not enter into such a procurement contract if the person is excluded or disqualified in *SAM.gov*.

§ 417.221 How would the exclusions from coverage for the USDA's foreign assistance programs apply?

The primary tier covered transaction would be the food aid grant agreement entered into between USDA and a program participant, such as a U.S. private voluntary organization. USDA would have to check *SAM.gov* before entering into the food aid grant agreement to ensure that the U.S. private voluntary organization that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier might be a subrecipient agreement between the U.S. private voluntary organization and a foreign subrecipient of the commodities that were provided under the food aid grant agreement. Pursuant to § 417.215(a)(8), this nonprocurement transaction would not be a covered transaction. In addition, a transaction at the first lower tier might be a procurement contract entered into between the U.S. private voluntary organization and a foreign entity to provide supplies or services that are expected to equal or exceed \$25,000 in value and that are needed by such organization to implement activities under the food aid grant agreement. Pursuant to § 417.220(b), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. private voluntary organization would be prohibited from entering into, at the first lower tier, an agreement with a subrecipient or a procurement contract that is expected to equal or exceed \$25,000 with an entity that appears in *SAM.gov* as excluded or disqualified.

§ 417.222 How would the exclusions from coverage for the USDA's export credit guarantee and direct credit programs apply?

(a) *Export credit guarantee program.* In the case of the export credit guarantee program, the primary tier covered transaction would be the guarantee issued by the USDA to a U.S. exporter. The U.S. exporter usually assigns the guarantee to a U.S. financial institution, and this would create another primary tier covered transaction between USDA and the U.S. financial institution. USDA would have to check the *SAM.gov* before issuing a guarantee or accepting a guarantee assignment to ensure that the U.S. exporter or financial institution that would be the primary tier participant is not excluded or disqualified. A transaction at the first

lower tier under the export credit guarantee program might be a payment obligation of a foreign bank to the U.S. exporter to pay on behalf of the importer for the exported U.S. commodities that are covered by the guarantee. Similarly, a transaction at the first lower tier might be a payment obligation of a foreign bank under an instrument, such as a loan agreement or letter of credit, to the U.S. financial institution assigned the guarantee, which has paid the exporter for the exported U.S. commodities and, in so doing, issued a loan to the foreign bank, which the foreign bank is obligated to repay on deferred payment terms. Pursuant to § 417.215(a)(9), these nonprocurement transactions would not be covered transactions. In addition, a transaction at the first lower tier under the export credit guarantee program might be a procurement contract (*i.e.*, a contract for the purchase and sale of goods) that is expected to equal or exceed \$25,000 entered into between the U.S. exporter and the foreign importer for the U.S. commodities, the payment for which is covered by the guarantee. Pursuant to § 417.220(c), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. exporter or U.S. financial institution would be prohibited from entering into, at the first lower tier, an agreement with an importer (or intervening purchaser) or foreign bank or a procurement contract that is expected to equal or exceed \$25,000 with an entity that appears on the *SAM.gov* as excluded or disqualified.

(b) *Direct credit program.* In the case of the direct credit program, the primary tier covered transaction would be the financing agreement between the USDA and the U.S. exporter. USDA purchases the exporter's account receivable in a particular transaction pursuant to the financing agreement. On occasion, such a transaction may contemplate a payment obligation of a U.S. or foreign bank to make the required payments. USDA would have to check *SAM.gov* before entering into a financing agreement or accepting such a payor to ensure that the U.S. exporter or the bank, if any, that would be the primary tier participant is not excluded or disqualified. A transaction at the first lower tier might be a payment obligation of the importer to pay the exporter for the exported U.S. commodities that are covered by the financing agreement. Pursuant to § 417.215(a)(9), this nonprocurement transaction would not be a covered transaction. In addition, a transaction at the first lower tier might be a procurement contract that is

expected to equal or exceed \$25,000 entered into between the U.S. exporter and the foreign importer for the U.S. commodities, the payment for which is covered by the financing agreement. Pursuant to § 417.220(c), this procurement contract would not be a covered transaction. However, pursuant to §§ 417.215(b) and 417.220(d), the U.S. exporter would be prohibited from entering into, at the first lower tier, an agreement with an importer (or intervening purchaser) or bank, or a procurement contract that is expected to equal or exceed \$25,000 with an entity that appears in *SAM.gov* as excluded or disqualified.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 417.332 What methods must I use to pass down requirements to participants in lower-tier covered transactions with whom I intend to do business?

You as a participant must include a term or condition in lower tier covered transactions requiring lower tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by subpart C of this part.

Subpart D—Responsibilities of Department of Agriculture Officials Regarding Transactions

§ 417.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and requires the participant to include a similar term or condition in lower tier covered transactions.

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Suspension

§ 417.755 When will I know whether the USDA suspension is continued or terminated?

The record will remain open for the full 30 days, as called for in 2 CFR 180.725, even when you make a submission before the 30 days expire.

Subpart H—Debarment

§ 417.865 How long may my debarment last?

The Secretary must permanently debar from participation in USDA programs any individual, organization, corporation, or other entity convicted of a felony for knowingly defrauding the United States in connection with any program administered by USDA.

(a) *Reduction*. A debarment under this paragraph may be reduced by the Secretary to a period of not less than 10 years.

(b) *Exemption*. A debarment under this paragraph will not apply with regard to participation in USDA domestic food assistance programs. For purposes of this paragraph, participation in a domestic food assistance program does not include acting as an authorized retail food store in the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC), or as a nonbeneficiary entity in any of the domestic food assistance programs. The programs include:

- (1) Special Nutrition Assistance Program, 7 U.S.C. 2011, *et seq.*;
- (2) Food Distribution Program on Indian Reservations, 7 U.S.C. 2013(b);
- (3) National School Lunch Program, 42 U.S.C. 1751, *et seq.*;
- (4) Summer Food Service Program for Children, 42 U.S.C. 1761; Child and Adult Care Food Program, 42 U.S.C. 1766;
- (5) Special Milk Program for Children, 42 U.S.C. 1772; School Breakfast Program, 42 U.S.C. 1773;
- (6) Special Supplemental Nutrition Program for Women, Infants, and Children, 42 U.S.C. 1786;
- (7) Commodity Supplemental Food Program, 42 U.S.C. 612c note;
- (8) WIC Farmers Market Nutrition Program, 42 U.S.C. 1786;
- (9) Senior Farmers' Market Nutrition Program, 7 U.S.C. 3007; and
- (10) Emergency Food Assistance Program, 7 U.S.C. 7501, *et seq.*

§ 417.870 When do I know if the USDA debarment official debar me?

The record will remain open for the full 30 days, as called for in 2 CFR 180.820, even when you make a submission before the 30 days expire.

Subpart I—Definitions

§ 417.930 Debarment official (USDA supplement to government-wide definition at 2 CFR 180.930).

The head of an organizational unit within USDA (*e.g.*, Administrator, Food

and Nutrition Service), who has been delegated authority in 7 CFR part 2 to carry out a covered transaction, is delegated authority to act as the debarment official in connection with such transaction. This authority to act as a debarment official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a debarment official to the Deputy Chief for the National Forest System or an Associate Deputy Chief for the National Forest System.

§ 417.935 Disqualified (USDA supplement to government-wide definition at 2 CFR 180.935).

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689), or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 3142);

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368), and E.O. 11738 (38 FR 25161, 3 CFR, 1973 Comp., p. 799);

(d) 515(h) of the Federal Crop Insurance Act (7 U.S.C. 1515(h));

(e) Section 12 of the Food and Nutrition Act of 2008 (7 U.S.C. 2021).

§ 417.1010 Suspending official (USDA supplement to government-wide definition at 2 CFR 180.1010).

The head of an organizational unit within USDA (*e.g.*, Administrator, Food and Nutrition Service), who has been delegated authority in 7 CFR part 2 to carry out a covered transaction, is delegated authority to act as the suspending official in connection with such transaction. This authority to act as a suspending official may not be redelegated below the head of the organizational unit, except that, in the case of the Forest Service, the Chief may redelegate the authority to act as a suspending official to the Deputy Chief for the National Forest System or an Associate Deputy Chief for the National Forest System.

Subpart J—[Reserved]

■ 6. Revise and republish part 418 to read as follows:

PART 418—NEW RESTRICTIONS ON LOBBYING

Sec.

Subpart A—General

418.100 Conditions on use of funds.
418.105 Definitions.
418.110 Certification and disclosure.

Subpart B—Activities by Own Employees

418.200 Agency and legislative liaison.
418.205 Professional and technical services.
418.210 Reporting.

Subpart C—Activities by Other Than Own Employees

418.300 Professional and technical services.

Subpart D—Penalties and Enforcement

418.400 Penalties.
418.405 Penalty procedures.
418.410 Enforcement.

Subpart E—Exemptions

418.500 Secretary of Defense.

Appendix A to Part 418—Certification Regarding Lobbying

Authority: 31 U.S.C. 1352; 5 U.S.C. 301; 2 CFR 200.450.

Subpart A—General**§ 418.100 Conditions on use of funds.**

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement must file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement must file with that agency a disclosure form, in the OMB-approved format, if such person has made or has

agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan must file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan must file with that agency a disclosure form, in the OMB-approved format, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 418.105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means:

(1) Any of the following Federal actions:
(i) The awarding of any Federal contract;
(ii) The making of any Federal grant;
(iii) The making of any Federal loan;
(iv) The entering into of any cooperative agreement; and,
(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian Tribe and Tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any *COM007* covered Federal action.

(i) *Loan guarantee and loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under 5 U.S.C., including a position under a temporary appointment;

(2) A member of the uniformed services as defined in 37 U.S.C. 101(3);

(3) A special Government employee as defined in 18 U.S.C. 202; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, 5 U.S.C. Appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for

profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person will be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 418.110 Certification and disclosure.

(a) Each person must file a certification, and a disclosure form, if required, with each submission that

initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b)(1) Each person must file a certification, and a disclosure form, if required, upon receipt by such person of:

(i) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

(ii) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(2) Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person must file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person must file a certification, and a disclosure form, if required, to the next tier above who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

(2) A subcontract, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,

(4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement.

(e) All disclosure forms, but not certifications, must be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person must forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section will be treated as a material representation of fact upon which all receiving tiers must rely. All liability arising from an erroneous representation will be borne solely by the tier filing that representation and must not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by 31 U.S.C. 1352.

(g) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C of this part.

Subpart B—Activities by Own Employees

§ 418.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 418.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 418.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 418.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, “professional and technical services” will be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client’s proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not

providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 418.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ 418.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 418.100(a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 418.110(a) and (b) regarding filing a disclosure form by each person, if required, will not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, “professional and technical services” will be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of

a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client’s proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 418.400 Penalties.

(a) Any person who makes an expenditure prohibited herein will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (in the OMB-approved format) to be filed or amended if required herein, will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil

penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency will consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section will be subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons will be subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ 418.405 Penalty procedures.

Agencies must impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804 through 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§ 418.410 Enforcement.

The head of each agency must take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§ 418.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary must transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Appendix A to Part 418—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned must complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

PART 421—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

■ 7. The authority citation for part 421 continues to read as follows:

Authority: 41 U.S.C. 701–707.

■ 8. Amend § 421.10 by revising the introductory text and paragraph (b) as follows:

§ 421.10 What does this part do?

This part requires that the award and administration of USDA grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101–8106, as amended, hereafter referred to as "the Act") that applies to grants. It thereby—

(b) Establishes USDA policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 8106 for Governmentwide implementing regulations.

■ 9. Revise § 421.400 to read as follows:

§ 421.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 421, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 8101–8106).

■ 10. Revise and republish part 422 to read as follows:

PART 422—RESEARCH INSTITUTIONS CONDUCTING USDA-FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCT

Sec.

422.1 Definitions.

422.2 Procedures.

422.3 Inquiry, investigation, and adjudication.

422.4 USDA Panel to determine appropriateness of research misconduct policy.

422.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.

- 422.6 Notification of USDA of allegations of research misconduct.
- 422.7 Notification of ARIO during an inquiry or investigation.
- 422.8 Communication of research misconduct policies and procedures.
- 422.9 Documents required.
- 422.10 Reporting to USDA.
- 422.11 Research records and evidence.
- 422.12 Remedies for noncompliance.
- 422.13 Appeals.
- 422.14 Relationship to other requirements.

Authority: 5 U.S.C. 301; 7 CFR 2610.1(c); Federal Policy on Research Misconduct (65 FR 76260)

§ 422.1 Definitions.

The following definitions apply to this part:

Adjudication. The stage in response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined. Corrective actions generally will be administrative in nature, such as termination of an award, debarment, award restrictions, recovery of funds, or correction of the research record. However, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.

Agency Research Integrity Officer (ARIO). The individual appointed by a USDA agency that conducts research and who is responsible for:

- (1) Receiving and processing allegations of research misconduct as assigned by the USDA RIO;
- (2) Informing OIG and the USDA RIO and the research institution associated with the alleged research misconduct, of allegations of research misconduct in the event it is reported to the USDA agency;
- (3) Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;
- (4) Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which time the research misconduct is alleged to have occurred, and with the USDA RIO;
- (5) Overseeing proceedings to address allegations of extramurally funded research misconduct at intramural research institutions and research institutions where extramural research occurs;
- (6) Ensuring that agency action to address allegations of research misconduct at USDA agencies performing extramurally funded research is performed at an organizational level that allows an

independent, unbiased, and equitable process;

(7) Immediately notifying OIG, the USDA RIO, and the applicable research institution if:

- (i) Public health or safety is at risk;
- (ii) USDA's resources, reputation, or other interests need protecting;
- (iii) Research activities should be suspended;
- (iv) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;
- (v) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;
- (vi) The scientific community or the public should be informed; or
- (vii) Behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;

(8) Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings;

(9) Other duties relating to research misconduct proceedings as assigned.

Allegation. A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement, or by other means of communication to an institutional or USDA official.

Applied research. Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

Assistant Inspector General for Investigations. The individual in OIG who is responsible for OIG's domestic and foreign investigative operations through OIG's national and regional investigative offices.

Basic research. Systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.

Extramural research. Research conducted by any research institution or entity other than the Federal agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.

Fabrication. Making up data or results and recording or reporting them.

Falsification. Manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of research misconduct. The conclusion, proven by a preponderance of the evidence, that research misconduct occurred, that such research misconduct represented a significant departure from accepted practices of the relevant research community, and that such research misconduct was committed intentionally, knowingly, or recklessly.

Inquiry. The stage in the response to an allegation of research misconduct when an assessment is made to determine whether the allegation has substance and whether an investigation is warranted.

Intramural research. Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.

Investigation. The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend a finding of research misconduct, and/or take other appropriate remedies.

Office of Inspector General (OIG). The Office of Inspector General of the United States Department of Agriculture.

Office of Science and Technology Policy (OSTP). The Office of Science and Technology Policy of the Executive Office of the President.

Plagiarism. The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Research. All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it.

Research institution. All organizations using Federal funds for research, including, for example, colleges and universities, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes. Activities which meet this definition constitute research for purposes of this part, whether or not they are conducted or supported under a program which is considered "research" for other purposes. For example, some demonstration and service programs

may include research/scientific activities.

Research misconduct. Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.

Research record. The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, research records (including data, notes, journals, laboratory records (both physical and electronic)), progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

USDA. United States Department of Agriculture.

USDA Research Integrity Officer (USDA RIO). The individual designated by the Office of the Under Secretary for Research, Education, and Economics (REE) who is responsible for:

- (1) Overseeing USDA agency responses to allegations of research misconduct;
- (2) Ensuring that agency research misconduct procedures are consistent with this part;
- (3) Receiving and assigning allegations of research misconduct reported by the public;
- (4) Developing Memoranda of Understanding with agencies that elect not to develop their own research misconduct procedures;
- (5) Monitoring the progress of all research misconduct cases; and
- (6) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

§ 422.2 Procedures.

Research institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

- (a) Appropriate separations of responsibility for inquiry, investigation, and adjudication;
- (b) Objectivity;
- (c) Due process;
- (d) Whistleblower protection;
- (e) Confidentiality—to the extent possible and consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and complainants is limited to those who need to know; and
- (f) Timely resolution.

§ 422.3 Inquiry, investigation, and adjudication.

A research institution that conducts extramural research funded by USDA bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. The research institution must perform an inquiry in response to an allegation, and must follow the inquiry with an investigation if the inquiry determines that the allegation or apparent instance of research misconduct has substance. The responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

- (a) Initiate an inquiry into any suspected or alleged research misconduct;
- (b) Conduct a subsequent investigation, if warranted;
- (c) Acquire, prepare, and maintain appropriate records of allegations of extramural research misconduct and all related inquiries, investigations, and findings; and
- (d) Take action to ensure the following:
 - (1) The integrity of research;
 - (2) The rights and interests of the subject of the investigation and the public are protected;
 - (3) The observance of legal requirements or responsibilities including cooperation with criminal investigations; and
 - (4) Appropriate safeguards for subjects of allegations, as well as complainants (see § 422.6). These safeguards should include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct, if any.

§ 422.4 USDA Panel to determine appropriateness of research misconduct policy.

Before USDA will rely on a research institution to conduct an inquiry, investigation, and adjudication of an allegation in accordance with this part, the research institution where the research misconduct is alleged must provide the ARIO its policies and procedures related to research misconduct at the institution. The research institution has the option of

providing either a written copy of such policies and procedures or a website address where such policies and procedures can be accessed. The ARIO to whom the policies and procedures were made available must convene a panel comprised of the USDA RIO and ARIOs from the Forest Service, the Agricultural Research Service, and the National Institute of Food and Agriculture. The Panel will review the research institution's policies and procedures for compliance with the OSTP Policy and render a decision regarding the research institution's ability to adequately resolve research misconduct allegations. The ARIO will inform the research institution of the Panel's determination that its inquiry, investigation, and adjudication procedures are sufficient. If the Panel determines that the research institution does not have sufficient policies and procedures in place to conduct inquiry, investigation, and adjudication proceedings, or that the research institution is in any way unfit or unprepared to handle the inquiry, investigation, and adjudication in a prompt, unbiased, fair, and independent manner, the ARIO will inform the research institution in writing of the Panel's decision. An appropriate USDA agency, as determined by the Panel, will then conduct the inquiry, investigation, and adjudication of research misconduct in accordance with this part. If an allegation of research misconduct is made regarding extramural research conducted at a Federal research institution (whether USDA or not), it is presumed that the Federal research institution has research misconduct procedures consistent with the OSTP Policy. USDA reserves the right to convene the Panel to assess the sufficiency of a Federal agency's research misconduct procedures, should there be any question whether the agency's procedures will ensure a fair, unbiased, equitable, and independent inquiry, investigation, and adjudication process.

§ 422.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.

(a) USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation. This may be necessary if the USDA RIO or ARIO believes, using sound discretion, that despite the Panel's finding that the research institution in question had appropriate

and OSTP-compliant research misconduct procedures in place, the research institution conducting the extramural research at issue:

(1) Did not adhere to its own research misconduct procedures;

(2) Did not conduct research misconduct proceedings in a fair, unbiased, or independent manner; or

(3) Has not completed research misconduct inquiry, investigation, or adjudication in a timely manner.

(b) Additionally, USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation for any other reason that the USDA RIO or ARIO considers it appropriate to conduct research misconduct proceedings in lieu of the research institution's conducting the extramural research at issue. This right is subject to paragraph (c) of this section.

(c) In cases where the USDA RIO or ARIO believes it is necessary for USDA to conduct its own inquiry, investigation, and adjudication subsequent to the proceedings of the research institution related to the same allegation, the USDA RIO or ARIO will reconvene the Panel, which will determine whether it is appropriate for the relevant USDA agency to conduct the research misconduct proceedings related to the allegation(s) of research misconduct. If the Panel determines that it is appropriate for a USDA agency to conduct the proceedings, the ARIO will immediately notify the research institution in question. The research institution must then promptly provide the relevant USDA agency with documentation of the research misconduct proceedings the research institution has conducted to that point, and the USDA agency will conduct research misconduct proceedings in accordance with the Agency research misconduct procedures.

§ 422.6 Notification of USDA of allegations of research misconduct.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify OIG and the USDA RIO of all allegations of research misconduct or violations of Federal criminal statutes involving USDA funds when the institution inquiry into the allegation warrants the institution moving on to an investigation.

(b) Individuals at research institutions who suspect research misconduct at the institution should report allegations in accordance with the institution's

research misconduct policies and procedures. Anyone else who suspects that researchers or research institutions performing Federally funded research may have engaged in research misconduct is encouraged to make a formal allegation of research misconduct to OIG.

(1) OIG has established a hotline for USDA employees and the general public to report fraud, waste, abuse, and mismanagement in USDA programs including allegations of research misconduct. Complaints, which may be submitted anonymously, must be filed with the OIG by submitting a complaint via the hotline on OIG's public website, sending a fax, or writing a letter.

(i) The OIG hotline may be accessed at <https://usdaoig.oversight.gov/hotline>.

(ii) Complainants who submit to the hotline on OIG's public website and who wish to provide additional documentation may fax them to (202) 690-2474.

(iii) Letters may be mailed to: United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026-3399.

(2) The USDA RIO may be reached at: USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250. Telephone: (202) 690-0745. Email: researchintegrity@usda.gov.

(c) To the extent known, the following details should be included in any formal allegation:

(1) The name of the research projects involved, the nature of the alleged misconduct, and the names of the individual or individuals alleged to be involved in the misconduct;

(2) The source or sources of funding for the research project or research projects involved in the alleged misconduct;

(3) Important dates;

(4) Any documentation that bears upon the allegation; and

(5) Any other potentially relevant information.

(d) Safeguards for complainants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as complainants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for complainants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith. The identity of complainants who wish to

remain anonymous will be kept confidential to the extent permitted by law or regulation.

§ 422.7 Notification of ARIO during an inquiry or investigation.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify the ARIO should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) The resources, reputation, or other interests of USDA are in need of protection;

(3) Research activities should be suspended;

(4) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(5) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(6) The scientific community or the public should be informed; or

(7) There is reasonable indication of possible violations of civil or criminal law.

(b) If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the institution must promptly notify the ARIO.

§ 422.8 Communication of research misconduct policies and procedures.

Institutions that conduct USDA-funded extramural research are to maintain and effectively communicate to their staff policies and procedures relating to research misconduct, including the guidelines in this part. The institution is to inform their researchers and staff members who conduct USDA-funded extramural research when and under what circumstances USDA is to be notified of allegations of research misconduct, and when and under what circumstances USDA is to be updated on research misconduct proceedings.

§ 422.9 Documents required.

(a) A research institution that conducts USDA-funded extramural research must maintain the following documents related to an allegation of research misconduct at the research institution:

(1) A written statement describing the original allegation;

(2) A copy of the formal notification presented to the subject of the allegation;

(3) A written report describing the inquiry stage and its outcome including copies of all supporting documentation;

(4) A description of the methods and procedures used to gather and evaluate

information pertinent to the alleged misconduct during inquiry and investigation stages;

(5) A written report of the investigation, including the evidentiary record and supporting documentation;

(6) A written statement of the findings; and

(7) If applicable, a statement of recommended corrective actions, and any response to such a statement by the subject of the original allegation, and/or other interested parties, including any corrective action plan.

(b) The research institution must retain the documents specified in paragraph (a) of this section for at least 3 years following the final adjudication of the alleged research misconduct.

§ 422.10 Reporting to USDA.

Following completion of an investigation into allegations of research misconduct, the institution conducting extramural research must provide to the ARIO a copy of the evidentiary record, the report of the investigation, recommendations made to the institution's adjudicating official, the adjudicating official's determination, the institution's corrective action taken or planned, and the written response of the individual who is the subject of the allegation to any recommendations.

§ 422.11 Research records and evidence.

(a) A research institution that conducts extramural research supported by USDA funds, as the responsible legal entity for the USDA-supported research, has a continuing obligation to create and maintain adequate records (including documents and other evidentiary matter) as may be required by any subsequent inquiry, investigation, finding, adjudication, or other proceeding.

(b) Whenever an investigation is initiated, the research institution must promptly take all reasonable and practical steps to obtain custody of all relevant research records and evidence as may be necessary to conduct the research misconduct proceedings. This must be accomplished before the research institution notifies the researcher/respondent of the allegation, or immediately thereafter.

(c) The original research records and evidence taken into custody by the research institution must be inventoried and stored in a secure place and manner. Research records involving raw data must include the devices or instruments on which they reside. However, if deemed appropriate by the research institution or investigator, research data or records that reside on or in instruments or devices may be

copied and removed from those instruments or devices as long as the copies are complete, accurate, and have substantially equivalent evidentiary value as the data or records have when the data or records reside on the instruments or devices. Such copies of data or records must be made by a disinterested, qualified technician and not by the subject of the original allegation or other interested parties. When the relevant data or records have been removed from the devices or instruments, the instruments or devices need not be maintained as evidence.

§ 422.12 Remedies for noncompliance.

USDA agencies' implementation procedures identify the administrative actions available to remedy a finding of research misconduct. Such actions may include the recovery of funds, correction of the research record, debarment of the researcher(s) that engaged in the research misconduct, proper attribution, or any other action deemed appropriate to remedy the instance(s) of research misconduct. The agency should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowingly conducted, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare. In determining the appropriate administrative action, the appropriate agency must impose a remedy that is commensurate with the infraction as described in the finding of research misconduct.

§ 422.13 Appeals.

(a) If USDA relied on an institution to conduct an inquiry, investigation, and adjudication, the alleged person(s) should first follow the institution's appeal policy and procedures.

(b) USDA agencies' implementation procedures, which must be made available on a designated USDA public website, identify the appeal process when a finding of research misconduct is elevated to the agency.

§ 422.14 Relationship to other requirements.

Some of the research covered by this part also may be subject to regulations of other governmental agencies (e.g., a university that receives funding from a USDA agency and also under a grant from another Federal agency). If more than one agency of the Federal Government has jurisdiction, USDA will cooperate with the other agency(ies) in designating a lead agency. When USDA

is not the lead agency, it will rely on the lead agency following its policies and procedures in determining whether there is a finding of research misconduct. Further, USDA may, in consultation with the lead agency, take action to protect the health and safety of the public, to promote the integrity of the USDA-supported research and research process, or to conserve public funds. When appropriate, USDA will seek to resolve allegations jointly with the other agency or agencies.

■ 11. Add part 423 to read as follows:

PART 423—GEOSPATIAL DATA MANAGEMENT AND STANDARDS FOR FEDERAL FINANCIAL ASSISTANCE AWARDS

Sec.

423.1 What does this part do?

423.2 Disclosure of geospatial investments.

Authority: 43 U.S.C. Ch. 46; 5 U.S.C. 301.

§ 423.1 What does this part do?

This part implements the requirements at 43 U.S.C. 2808(b)(3) which pertain to the disclosure of USDA Federal financial assistance that involves geospatial data, as supplemented by this part.

§ 423.2 Disclosure of geospatial investments.

USDA awarding agencies must ensure that all Federal financial assistance instruments which involve the acquisition, storage, or distribution of geospatial data comply with USDA policy. For all such instruments, USDA awarding agencies must require award terms and conditions necessary for the specific purpose of complying with law, regulation, and USDA policy.

Lynn Moaney,

Deputy Chief Financial Officer, Office of the Chief Financial Officer.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2024-2061; Amendment No. 71-56]

RIN 2120-AA66

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.