

Rules and Regulations

Federal Register

Vol. 84, No. 169

Friday, August 30, 2019

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

2 CFR Part 1402

[DOI-2018-0013; 190D0102DM, DS62400000, DLSP00000.000000, DX62401]

RIN 1090-AB19

Financial Assistance Interior Regulation

AGENCY: Office of the Secretary, Interior.
ACTION: Final rule.

SUMMARY: This final rule establishes the Financial Assistance Interior Regulation (FAIR). The FAIR supplements the Office of Management and Budget (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), which was adopted by the Department of the Interior (DOI or Department) on December 19, 2014. This final rule supports the Department's goal of improving its financial assistance program, consolidate the Department's financial assistance regulations and policies derived from the OMB Uniform Guidance, and streamline the implementation of OMB's Uniform Guidance and DOI financial assistance policy.

DATES: Effective October 29, 2019. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 29, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Kerry Neal, Director, Office of Grants Management, Department of the Interior, 1849 C Street NW, Mail Stop 4262 MIB, Washington, DC 20240; telephone (202) 208-3100; or email grants@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 26, 2013, the Office of Management and Budget (OMB)

published its *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (referred to as the "Uniform Guidance," 78 FR 78590). The OMB Uniform Guidance, 2 CFR part 200, provided a government-wide framework for Federal awards management and streamlined administrative requirements, cost principles, and audit requirements for Federal awards including grants and cooperative agreements.

The Uniform Guidance required Federal agencies to promulgate regulations implementing the policies and procedures applicable to Federal awards by December 26, 2014. On December 19, 2014, the Department published a final rule to adopt the OMB Uniform Guidance in full as 2 CFR part 1402, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (79 FR 75867). Three days later, on December 22, 2014, DOI issued memoranda to supplement the following provisions of the OMB Uniform Guidance: (1) Indirect Cost Rates for Federal Financial Assistance Awards and Agreements; (2) Conflict of Interest and Mandatory Disclosures for Financial Assistance; (3) Financial Assistance Application and Merit review Processes; and (4) Financial Assistance Awards for For-Profit Entities, Foreign Public Entities, and Foreign Organizations. On February 8, 2016, the Department published a proposed rule to establish the FAIR and to consolidate all of the policy memoranda into a regulation to be codified at 2 CFR part 1402 (81 FR 6462). Two comments were received addressing, first, details of the conflicts of interest provision and, second, the application of 2 CFR part 200, subparts E (Cost Principles) and F (Audit Requirements), to tribal awards. These two comments were addressed by expanding the conflict of interest provision to be consistent with the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and by clarifying the applicability of 2 CFR part 200, subparts E and F, to tribal awards in this final rulemaking, respectively.

Because the RIN for the 2016 proposed rule expired and Departmental leadership wanted to strengthen the conflict of interest provisions and incorporate open science and land

acquisition provisions, the Department proposed the current version of its FAIR regulations as a revision to 2 CFR part 1402 for public comment on March 21, 2019. The Department received 55 public comments (84 FR 10439). The final rule reflects the totality of comments considered from the Notice of Proposed Rulemaking (NPRM) stage of the process.

II. Overview of the Final Rule

The FAIR regulations final rule: First, revises 2 CFR part 1402 to more accurately reflect exceptions to this part; and second, adds supplemental regulations for DOI's financial assistance program that is codified at 2 CFR part 1402. The rule represents an administrative simplification and does not make any substantive changes to 2 CFR part 200 policies and procedures. Thus, this rulemaking does not revisit substantive issues resolved during the development and finalization of the OMB Uniform Guidance which was adopted by the Department on December 19, 2014. This rule helps ensure that financial assistance provided by the DOI is administered in full compliance with applicable law, regulation, policy and best practices to ensure the American people get the most value from the money the DOI spends on financial assistance. The sections in this final rule represent areas of the financial assistance program where questions have been raised by stakeholders, including auditors. As a result, DOI clarified specific areas.

(a) Major Changes

After reviewing and considering the comments received on the NPRM, we made several clarifications and changes in this final rule. The final rule:

- Clarifies the definition for real property.
 - Simplifies and clarifies language for the conflict of interest requirements.
 - Clarifies mandatory disclosure limitations on unresolved items.
 - Simplifies language for the merit review requirements; removes the term "maximum" associated with discretionary awards.
 - Clarifies that § 1402.207(b) conditions applies to both nonprofit and for-profit recipients.
 - Deletes duplicative language for the lobbying disclosure and certification requirements.

- Removes the definition of data and revises § 1402.315 to clarify the distinction between data and other related types of information.

(b) Key Issues

The DOI reviewed many comments from a variety of entities, but received the majority of the detailed comments focused on real property, appraisals, and scientific data. These key issues are addressed more fully in section III of this preamble, but include:

- **Real Property Program Impacts**—Includes such things as costs, time to complete appraisals, scarcity of Yellow Book appraisers, and grandfathering of appraisals already in progress.
- **Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or Yellow Book) Technical Issues/Requirements**—Includes such things as the applicability of UASFLA, specific technical requirements, and assertions of inconsistent requirements for UASFLA compliance within the DOI and externally across other government agencies.
- **Qualifications and Training of Appraisers**—Includes such things as uncertainty regarding qualifications of appraisers for conducting UASFLA appraisals, qualifications for review appraisers, appraisal review conducted by non-appraisers, and terminology used when referring to the appraisal credentials issued by States.
- **Promoting Open Science**—Includes the expanded definition of data and the requirement to make data relied upon in research available to the public and the format to provide the data.

Incorporation by Reference: The purpose of the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) is to promote fairness, uniformity, and efficiency in the appraisal of real property in Federal acquisitions. The same goals of uniformity, efficiency, and fair treatment of those affected by public projects underlie the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which applies to Federal acquisitions as well as many State and local government acquisitions involving Federal funds. The Yellow Book is available in hard copy or interactive electronic format from The Appraisal Foundation at http://www.appraisalfoundation.org/imis/TAF/Yellow_Book.aspx or from the U.S. Department of Justice at <https://www.justice.gov/file/408306/download>.

(c) Section by Section Analysis

This portion of the preamble summarizes the final rule and highlights

certain aspects of the rule that may benefit from additional explanation.

Subpart A of the final rule sets forth definitions for terms used in this part. Terms defined in this rulemaking are “employment,” “financial assistance officer,” “foreign entity,” “non-Federal entity,” and “real property.” As explained in the proposed rule, non-Federal entity is expanded to include for-profit organizations. Several of these terms help clarify regulatory changes designed to avoid conflicts of interest which might place a non-Federal entity, its employees, and/or its subrecipients in a position of conflict, real or apparent. The final rule adopts the proposed term “real property” to address DOI’s specific focus on interests in land. The “data” definition was removed based on comments received stating that the definition was beyond the scope of typical definitions in the industry.

Subpart B sets forth general provisions including: The purpose of the part, application, exceptions, policies and procedures that apply to non-Federal entities, conflict of interest policies, and mandatory disclosure requirements. DOI adopted as proposed § 1402.100, which includes establishment of financial assistance regulations designed to ensure that financial assistance is administered in full compliance with applicable law, regulation, policy and best practices; and to help ensure that the American people get the most value from the money that DOI spends on financial assistance. The adopted § 1402.101 provides that the regulation is applicable to all DOI grant-making activities and to any non-Federal entity that applies for, receives, operates, or expends funds from a DOI financial assistance award after the effective date of this final rule, unless otherwise authorized by Federal statute. Section 1402.103 adopted as proposed explains that non-Federal entities must also follow bureau or office policies and procedures as communicated in notices of funding opportunities and award terms and conditions. This section also reflects the order of precedence, where policies or procedures may conflict with existing regulations at 2 CFR part 200; or this part. In such cases, then the regulations at 2 CFR part 200 or this part, when final, will supersede, unless otherwise authorized by Federal statute.

Section 1402.112 sets forth requirements related to conflicts of interest that apply to recipients of financial assistance awards. The final rule, adopted as proposed, applies to all non-Federal entities and requires the full text of language proposed in

paragraphs (a) through (e) in all notice of funding opportunities and financial assistance awards. The proposed rule was amended in order to make clear to non-Federal entities that they must appropriately address prohibited conflicts of interest preventing them from providing impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement. Paragraph (b) Requirements was removed to avoid any confusion that the rule was not in compliance with statutory and regulatory law. Paragraphs (a) through (e) set forth directions on applicability, appropriate action that must be taken to avoid a conflict of interest, required notification, and enforcement.

Section 1402.113 provides as proposed that, in addition to the disclosures required under 2 CFR 200.112 and 200.113, non-Federal entities and applicants must disclose in writing any potential or actual conflict of interest; and must also disclose any outstanding unresolved matters with the Government Accountability Office or the Office of Inspector General of any Federal agency when submitting a proposal and throughout the life of the award. “Unresolved” matters are now more clearly defined.

Under subpart C, the rule addresses: Merit review requirements for competitive awards, requirements for domestic for-profit entities, specific financial assistance award terms and conditions that apply to domestic for-profit entities, and lobbying disclosure and certification requirements.

Section 1402.204 sets forth merit review requirements for competitive grants and cooperative agreements unless otherwise prohibited by Federal statute. After reviewing the comments, DOI removed the requirements for bureaus and offices to create review systems that consider statutory or regulatory provisions, business evaluation, risk assessment, and other applicable government-wide pre-award considerations for discretionary programs that are noncompetitive. While DOI believes review systems are important, it did not believe the specific requirements needed to be in the regulation.

This section also adopts as proposed, required pre-award considerations for both discretionary competitive and noncompetitive awards to take into account the alignment of the award’s purpose, goals, and measurement with the current DOI Government Performance and Results Act Strategic Plan. Section 1402.204 also adopts as amended an expectation of competition in awarding discretionary funds, unless

otherwise directed by Congress. After the review of comments, DOI did remove the word “maximum” that described the competition requirement. The final rule also adopts that when grants and cooperative agreements are awarded competitively, the process will be fair and impartial, that all applicants will be evaluated only on the criteria stated in the announcement, and that no applicant will receive an unfair competitive advantage. This section of the rule also sets forth direction on: The composition of an evaluation and selection plan, completeness of applications and proposals, timeliness, threshold screening, merit review evaluation screening, and risk assessments.

Sections 1402.206 and 1402.207 are designed to be read together as proposed. Section 1402.206 provides that § 1402.207(a) contains standard award terms and conditions that always apply to for-profit entities and that terms in § 1402.207(b) contain terms for recipients including non-profits and for-profits to apply to all subawards and contracts over the simplified acquisition threshold. The section further lists additional administrative guidelines in existing regulations and in proposed § 1402.414 that may be applied to domestic for-profit entities. Provision is made for particular program offices and bureaus to develop specific administrative guidelines for domestic for-profits. Finally, § 1402.206 adopts that bureau and office award terms and conditions must be managed in accordance with the requirements in the existing 2 CFR 200.210.

Section 1402.207 lists specific conditions that always apply to domestic for-profit entities and subawards. In addition to all other applicable terms and conditions, specific financial assistance award terms and conditions adopted in § 1402.207(d) apply to foreign entities. DOI also clarified that the provisions in § 1402.207(b) applies to both non-profit and domestic for-profit entities.

Section 1402.208 was removed after DOI’s review of the comments, as DOI agreed it was redundant with § 1402.112(d) restrictions on lobbying.

Subpart D includes regulations that set forth post Federal award requirements.

Section 1402.315 amends requirements for availability of data that implement Secretary’s Order 3369, “Promoting Open Science,” dated October 18, 2018. The requirements in this section rely on existing regulatory provisions found at 2 CFR 200.315(d) to achieve the goals set forth in section 4b(3) of the Secretary’s Order to provide

the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department. To accomplish these goals, the section provides that DOI bureaus and offices shall specifically require under the terms of any award, the ability to publicly release associated data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual, subject to applicable laws. This provision applies to all grants, cooperative agreements, or other similar agreements between any Bureau, Office, or other organization of the Department and any third party; and would not be limited to rulemaking. This section recognizes the Department’s responsibility to ensure that the benefits derived from Federal financial assistance are generally available to the public, subject to applicable law. DOI clarified in the final rule that methodologies, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual resulting from a financial assistance agreement should be available to DOI for sufficient independent verification. It further clarified the Federal Government rights to such items. It also adopts, as proposed, the requirement that Bureaus and offices must include these requirements in all notice of funding opportunities.

Section 1402.329 adopts the requirements for land acquired under an award. The regulation provides that prior to land purchases, bureaus and offices must ensure compliance with the prior written approval requirements for land acquisition in the existing 2 CFR 200.439. Whenever a recipient is seeking DOI approval to use award funds to purchase an interest in real property, OMB-approved government-wide data elements must be submitted to the responsible bureau or office. For this provision, the Financial Assistance Officer is responsible for ensuring compliance. Furthermore, all aspects of the purchase must be in compliance with applicable laws and regulations relating to purchases of land or interests in land. This section also requires that unless a waiver valuation applies in accordance with 49 CFR 24.102(c), land or interests in land that will be acquired under the award must be: (a) Appraised in accordance with the Uniform

Appraisal Standards for Federal Land Acquisitions (UASFLA or the “Yellow Book”), which is incorporated by reference; (b) appraised by a real property appraiser licensed or certified by the State or States in which the property is located; and (c) that the appraisal report shall be reviewed by a qualified review appraiser that meets qualifications established by the DOI Appraisal and Valuation Services Office (AVSO). Requirements are also set forth in this section for foreign land acquisition. In § 1402.329, DOI sets forth direction that recipients must submit reports on the status of the real property for all financial assistance actions where real property, as defined in this final rule, is acquired under the Federal award as required by 2 CFR 200.329. If the interest in real property will be held for less than 15 years, reports must be submitted annually; otherwise the recipient must submit the first report within one year of the period of performance end date of the award and then, at a minimum every five years thereafter. The rule also sets forth who should receive the reports, the required format, the content, and timing for such reports.

Section 1402.414 establishes DOI policy, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates applicable to all Federal financial assistance programs awarded and administered within DOI. The regulatory text sets forth procedures and criteria for using an indirect cost rate other than the non-Federal entity’s negotiated rate. The goal of this section is to provide consistent direction within the Department on negotiated indirect cost rate deviations to ensure compliance with the Uniform Guidance. Existing provisions of 2 CFR 200.414(c) require Federal agencies to accept federally negotiated indirect cost rates. Federal agencies may use a rate different from the negotiated rate for a class of awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegatee based upon documented justification described within 2 CFR 200.414(c)(3).

For all deviations to the Federal negotiated indirect cost rate, including statutory, regulatory, programmatic, and voluntary, the rule provides that the basis of direct costs against which the indirect cost rate is applied must be: The same base identified in the recipient’s negotiated indirect cost rate agreement, if the recipient has a federally negotiated indirect cost rate agreement; or, the modified total direct

cost (MTDC) base, in cases where the recipient does not have a federally negotiated indirect cost rate agreement or, with prior approval of the awarding bureau or office, when the recipient's federally negotiated indirect cost rate agreement base is only a subset of the MTDC (such as salaries and wages) and the use of the MTDC still results in an overall reduction in the total indirect cost recovered.

Section 1402.414(d), adopted as proposed, provides that in cases where the recipient does not have a federally negotiated indirect cost rate agreement, the Department will not use a modified rate based upon total direct cost or other base not identified in the federally negotiated indirect cost rate agreement or defined within 2 CFR 200.68.

Section 1402.414(d) goes on to provide direction on indirect cost rate deviation required by statute or regulation, indirect cost rate reductions used as cost-share, programmatic indirect cost rate deviation approval process, voluntary indirect cost rate reduction, and unrecovered indirect costs.

III. Public Comments on the Proposed Rule and Responses to Comments

(a) Overview

The Department sought public comment on the proposed rule, receiving 55 comments from over 200 individuals, non-profits, State and local governments, and Federal entities. All public comments received on the NPRM are available in a combined docket at docket number: DOI-2018-0013. The Department decided to proceed to the final-rule stage after consideration of all the comments. The Department's responses to comments are detailed below.

(b) Responses to Public Comments on the Proposed Rule

(1) Comments Related to Executive Orders

(i) Executive Order 12866—Regulatory Planning and Review

Comment: Four commenters expressed the opinion that the rule has significant changes for States and other grantee organizations resulting in significant new process requirements and burdens, and increased costs. Two commenters specifically commented that incorporating open science and land acquisition provisions into this regulation may violate Executive Order 12866."

Response: The Department received a review from OMB, and the rule was determined non-significant under E.O.

12866. The impact of this rule has been analyzed, and it does not have an annual effect on the economy of \$100 million or more, adversely affect the economy in a material way, or create a serious inconsistency or otherwise interfere with another agency's actions. Accordingly, the impact of this rule does not rise to the level of significance under the E.O. The DOI has however made changes to the open science provisions of the proposed rule. DOI has made no changes to the land acquisition provisions of the proposed rule in response to these comments. The Uniform Act and its regulations at 49 CFR part 24 apply to Federal acquisitions as well as many State and local government acquisitions involving Federal funds (UASFLA 0.1). As such, the UASFLA standards are no different than the USDAP standards, they are merely tailored to meet the specific needs of the Government. Accordingly, the land provisions are not a significant change.

(ii) Executive Order 13132—Federalism

Comment: Three commenters raised concern over the rule being contrary to established principles of federalism. Specifically, they commented that the provisions related to the Yellow-book requirement and data availability impeded full compliance with State privacy laws related to land ownership and requiring the disclosure of what the State determines is protected and sensitive information.

Response: The Department does not agree that the rule is contrary to E.O. 13132 or the principles of federalism. Non-Federal entities participate in Federal assistance programs voluntarily; and when seeking Federal funds, they are required to meet Federal requirements attached to the receipt and use of such funds. Section 1.15 of the Yellow Book specifically addresses confidentiality and the appraiser's responsibility to follow the USPAP Ethics Rule as it relates to confidentiality and the appraiser/client relationship. State privacy requirements remain intact. An appraisal completed to either standard has the same confidentiality requirements. Furthermore, the requirement in this rule to use the Yellow Book standard for all appraisals is already the standard practice for Federal assistance programs, and is a requirement for all direct Federal land purchases. The DOI made no changes to the proposed rule in response to this comment.

(iii) Executive Order 13563—Improving Regulation and Regulatory Review

Comment: Three commenters raised concern over the rule not promoting predictability, reducing uncertainty, or providing the least burdensome tools for achieving regulatory objectives with regard to: (1) Appraisal standards, (2) review appraiser standards, and (3) real property reporting requirements.

Response: The rule clarifies the standard for real property appraisals, appraiser standards, and reporting requirements under 2 CFR 1402.329. Specifically, there are two existing regulations (49 CFR 24.101(d) and 24.103(a)) that relate to appraisals for real property, including real property under federally assisted programs. The DOI made no changes to the proposed rule in response to these comments.

(2) Comments Related to Data

(i) Definition of Data

Comment: Two commenters raised concern over the definition of data in the rule. Specifically, the commenters felt that the definition in the rule is too broad, outside of the industry-standard definition of the term, and it includes data that takes years to develop and has a significant value to the non-Federal award recipient. The rule reserves the right for the DOI to determine whether to make such data that is produced with Federal funding publically available, which may cause economic injury and competitive harm to non-Federal recipients.

Response: The Department made changes in response to these comments, to eliminate the definition of data from this regulation, and then to make minor conforming revisions to the text of § 1402.315 to clarify the Department's requirements related to methodology, factual inputs, models, analyses, technical information, reports, conclusions, and other scientific assessments, which are not included in the industry-standard definition of data. The change resolves the issue that the definition of "data" in the proposed rule was beyond the scope of the industry-standard definition of the term. The DOI did not make substantive changes, but rather clarifying changes regarding the Department's rights in relation to methodology, factual inputs, models, analyses, technical information, reports, conclusions, and other scientific assessments. The Department has a responsibility to ensure that the benefits derived from Federal financial assistance awards are available to the public. In order to ensure transparency and the greatest possible use of the fruits of Federal appropriations, the rule

reserves the right for the DOI to decide whether these types of outputs resulting from a Federal award shall be publicly released. The Department will make determinations regarding public release of data on a case-by-case basis, and may consider input from interested parties. The Department will not take any action in violation of statute, including, for example, public release of information that is protected under an exception to the Freedom of Information Act. However, the rule ensures that the DOI reserves the right to make that determination for all data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, valuation products, and other scientific assessments produced under a federally-funded award.

(ii) Protected Use of Data

Comment: Thirty-five commenters requested clarification on the specific requirements for protection and use of data under § 1402.315, Availability of Data. These commenters expressed concern that data collection might be burdensome as the FAIR does not describe what format the data will need to be available in, whether grantees will have to provide the raw data, and whether recipients will have to translate data for all requesting parties. Also, commenters raised questions about whether the grantees are legally allowed to share data with non-intended users; for how long after the award has closed that the recipient needs to make the data available for use; and whether the requirement applies to already-published data or raw un-scrubbed data. Lastly, one commenter wanted to ensure that this rule “will not compromise threatened, endangered, or other species of concern by making certain information about geographic locations public”.

Response: The DOI believes that these comments raise issues that are too specific and detailed to address in a rule. Issues related to formatting, procedures, and specific issues like endangered species protections are best addressed in each Notice of Funding Opportunity for each Federal financial assistance program. As such, individual financial assistance agreements will specify the format required for the data, and the government will make every effort to be as descriptive as practical in the initial Notice of Financial Assistance Opportunities. The DOI made changes to the definition of data in the final rule. DOI also indicated that it will make determinations regarding public release of data on a case-by-case basis, and may consider input from interested parties. The Department will

not take any action in violation of a statute.

(3) Comments Related to Real Property

(i) Cost of Uniform Appraisal Standards for Federal Land Acquisition (UASFLA)

Comment: Multiple commenters expressed concern with the rule’s requirement that appraisals for land purchased under Federal assistance awards must be conducted using the UASFLA (Yellow Book) standard due to concern that appraisals conducted under this standard are more costly. One commenter indicated that they allocate an average of \$7,500 for the appraisal, and various other commenters stated that they expected costs of appraisals to increase thirty percent to fifty percent based on conversations with appraisers in their area.

Response: Title 49 CFR 24.103(a) allows agencies to require Yellow Book compliance, which is the appropriate appraisal standard for acquisition of property interests by the Federal Government. The DOI contracts hundreds of land appraisals each year in many different States that are completed under both The Uniform Standards of Professional Appraisal Practice (USPAP) and UASFLA standards. In the DOI’s experience, there is no significant difference in the cost of a USPAP appraisal versus a UASFLA appraisal. Cost variability is most often a result of the specifics of the assignment rather than the applicable appraisal standard. The \$7,500 appraisal figure in the comments is consistent with the pricing for DOI appraisals. Fees typically go up as the complexity increases and the period of performance for the appraisal shortens. Additionally, there is no discernable difference in the time taken for the appraisal, whether it is completed under USPAP or UASFLA standards. The average time of completion from the notice to proceed with the appraisal to the delivery of the appraisal to the review appraiser is around sixty-five days. The average time for appraisal review, including obtaining revisions from the appraiser if necessary, is around forty days. These averages are regardless of the appraisal standard applicable to the assignment is USPAP or UASFLA. The appraisal review days include the days that the appraiser is making necessary revisions to the appraisal report. This length varies depending on the quality of the appraisal report and the appraiser’s schedule for revisions. In addition, the rule currently allows for waivers in accordance with 49 CFR 24.102(c) in instances where the total value of the

land is so low that the cost of the appraisal is not justified. The DOI made no changes to the proposed rule in response to this comment.

(ii) Scarcity of UASFLA Appraisers

Comment: Multiple commenters expressed concern about the perceived scarcity of UASFLA qualified appraisers.

Response: Appraisers are licensed or certified by the States to perform appraisals, and the States establish limits to the levels of licensure in accordance with Title XI of the Financial Institution Reform and Recovery and Enforcement Act (FIRREA) of 1989, P.L. 101–73. Most State licensed or certified appraisers are able to complete UASFLA appraisals. There are no separate or additional licensure requirements for completing UASFLA appraisals; the issue is not lack of qualifications as stated in the comments, and scarcity can be addressed through outreach to the appraisal community to bring awareness of the opportunity for assignments. The DOI made no changes to the proposed rule in response to this comment.

(iii) Grandfathering

Comment: A commenter raised a concern about the ability to grandfather appraisals that are already in progress or that have been completed but grants not awarded.

Response: Appraisals that have already been initiated as of the date the final rule is published will be accepted as long as they meet the standards required by the grant program at the time the appraisal was initiated. However, all appraisals initiated after the date of the final rule will need to conform to UASFLA. The DOI made no changes to the proposed rule in response to this comment.

(iv) Perceived Burden of UASFLA Requirements

Comment: Several commenters raised general concerns about the requirement that all appraisals for all land purchased under Federal assistance awards conform to the UASFLA appraisal standard.

Response: All UASFLA appraisals must also conform to USPAP. USPAP is a broad general standard that applies to all types of appraisals conducted by State licensed or certified appraisers. This standard includes real property appraisal, mass appraisal, personal property appraisal, and business appraisal. The UASFLA/Yellow Book is a supplemental standard to USPAP, meaning that it builds on the foundation established by USPAP and is more

specific to direct acquisitions and federally assisted acquisitions under the Uniform Act. Much of the UASFLA was written to conform to the Uniform Act appraisal requirements found in 49 CFR 24.103. The Uniform Act and its regulations at 49 CFR part 24 apply to Federal acquisitions as well as many State and local government acquisitions involving Federal funds (UASFLA 0.1). As such, the UASFLA standards are no different than the USDAP standards, they are merely tailored to meet the specific needs of the Government.

Comment: Other comments that were received requested that the DOI's Federal assistance programs, such as the Wildlife and Sport Fish Restoration Program (WSFR), have consistent appraisal requirements.

Response: The Department agrees, and is specifying UASFLA as the applicable standard bringing all federally-assisted land acquisition programs under one consistent appraisal standard. For example, for the WSFR program, Yellow Book appraisals are required by some regions, but other regions, for that same program, apply USPAP only. Requiring UASFLA/Yellow Book compliance Department-wide will ensure these programs are consistent with other programs within the Department, including the National Park Service LWCF State Assistance Program, the American Battlefield Protection Program, and the FWS Cooperative Endangered Species Conservation Fund Grant Program.

Comment: Some comments mentioned the USDA Forest Legacy grant program which also requires UASFLA appraisals.

Response: The final rule seeks to create consistent requirements across the Department's grant programs by requiring appraisals be conducted in compliance with the UASFLA, which is the predominant standard for land or real property interest acquisition appraisals within the Department. Some external agencies may have different requirements for appraisal standards due to different missions and objectives; however, the UASFLA is generally applicable to land management agencies as well as other agencies that acquire or fund acquisition of land or other real property interests. Within the Department, the UASFLA is already the most common standard for land or real property interest acquisition and helps ensure compliance with UASFLA 0.1, parallel goals of "uniformity, efficiency, and fair treatment of those affected by public projects . . ."

Comment: One other area of comment was related to the inability of appraisers conducting UASFLA appraisals to

consider "conservation values" or use comparable sales involving government agencies or nonprofit organizations.

Response: For any appraisal that seeks to determine fair market value, the highest and best use of the property being appraised is what drives the value. Non-economic uses such as open space or watershed protection are not typically recognized as the highest and best use because there is no economic benefit returned to the property. The major appraisal organizations, as well as the Interagency Land Acquisition Conference (authors of the UASFLA), have concluded that where fair market value is the value sought, the value must be based on an economic highest and best use and that a non-economic highest and best use is not a proper basis for the opinion of market value.

Comparable sales involving government entities or nonprofit organizations also must be considered with extra care and analysis because they can reflect non-market motivation or other influences such as tax benefits to the seller. The UASFLA does not prohibit the use of these sales, but these sales do require an additional level of scrutiny to ensure that they are arm's length transactions and accurately reflect open market situations.

(v) Qualifications and Training

Comment: Thirty-two comments addressed the inclusion of qualifications for appraisers in the proposed rule.

Response: The qualifications established by AVSO are included in a draft of Part 602, Chapter 1 of the Departmental Manual that is currently being updated by the Department. For fee appraisers preparing valuation products (including appraisals and appraisal reviews) for financial assistance programs within the Department, appraisers must hold an appraisal license in the State where the property appraised is located, commensurate with the type of property being appraised. This requirement allows an appraiser to conduct appraisals or appraisal reviews for financial assistance programs as long as they act within the property type and value limits of their level of license. Title XI of the FIRREA established these limits. The qualifications established by AVSO are consistent with this law. The UASFLA does not prohibit the use of comparable sales involving government entities or nonprofit organizations, but these sales do require an additional level of scrutiny to ensure that they are arm's length transactions and accurately reflect open market situations because they can reflect non-market motivation

or other influences such as tax benefits to the seller.

Comment: Other comments were received that discussed appraisers being "Yellow Book or UASFLA Certified" or a specific certification required for appraisers or review appraisers.

Response: In either case, there are no certifications specific to either UASFLA appraisals or appraisal review. Regarding UASFLA appraisals, any appraiser can perform UASFLA appraisals as long as they are competent to perform the assignment and the property type and value are within the limits of their license as established by FIRREA. Various appraisal organizations offer training in conducting UASFLA appraisals, and these courses are available online and in traditional classroom settings to facilitate appraisers becoming familiar with the standard.

For appraisal review qualifications, there are specific review designations for appraisers offered by at least two professional appraisal organizations—the Appraisal Institute (AI-GRS) and the American Society of Farm Managers and Rural Appraisers (RPRM) that conform to the Departmental Manual, Part 602, Chapter 1, requirements requiring education and experience in appraisal review, a comprehensive exam, and a demonstration appraisal review report.

Comment: Two comments were received that indicated that an appraisal review designation should be required to be considered "qualified" for appraisals related to grant programs.

Response: Since this is not required for appraisals used for direct acquisition by the United States, it is not realistic to require a higher level of qualification for appraisers conducting appraisals and appraisal reviews for financial assistance programs.

(vi) Requirements for Recipient Reporting on Real Property Purchases

Comment: Forty-two commenters raised questions regarding the public land reporting requirements in § 1402.329(d). Commenters stated that the reporting requirement is redundant and an unnecessary burden to the grantee, and that the SF-429A requires information that is above and beyond the intent of 2 CFR 200.329. Other commenters focused on current program reporting requirements, and how the requirements in this rule would impact those current requirements in terms of reporting deadlines, data, and forms.

Response: The intent of the rule is to standardize the process for land requirements and data collected across all DOI Federal assistance programs. The requirements in this rule will be

adopted by all DOI programs, and will replace, not add to, existing requirements. Program specific requirements by commenters will be replaced by one standardized process. This reporting requirement in this rule does not expand the requirements in 2 CFR 200.329, but merely clarifies DOI's standards for the format and deadlines of the reporting that is already required by that section. This final rule requires using a Standard Form that has already been established as a Government standard, in order to conform with an existing format and to avoid the creation of a duplicative form. The DOI made no changes to the proposed rule in response to this comment.

(4) Comments Related to Definitions

(i) Employment

Comment: One commenter requested that DOI revise the definition of employment in the rule, and suggested that the definition expands upon traditional definitions of the term under the Fair Labor Standards Act (FLSA) by including relationships such as “contractor” and “partner.”

Response: This definition in the rule is intended to make clear that the types of *personal services* as described therein are also included in the definition of employment and should be reported as such in the grant application or progress report. The DOI made no changes to the proposed rule in response to this comment.

(ii) Non-Federal Entity

Comment: The definition of non-Federal entity in § 1402.6 is an identical definition provided in 2 CFR 200.69. We recommend this to be removed because there is no additional value or clarification provided here.

Response: The definition in § 1402.6 slightly revises the definition in 2 CFR 200.69 to also include for-profit entities in the definition of non-Federal entity. As explained in the proposed rule, we believe this is needed because 2 CFR part 200 leaves the Department discretion for for-profit entities. Accordingly, DOI made no changes to the proposed rule in response to this comment.

(iii) Real Property

Comment: The proposed definition in § 1402.7 needs further clarity on land and interests in land.

Response: The DOI revised the definition of real property in the proposed rule in response to this comment. DOI clarified that real property interests were included in the definition of real property.

(5) Comments on Other Sections

(i) Section 1402.100 Purpose

Comment: Three commenters raised concern over the stated purpose of the proposed rule. The background information states that “the proposed rule represents an administrative simplification and is not intended to make any substantive changes to 2 CFR part 200 policies and procedures.” However, the proposed rule implements appraisal standards (§ 1402.329) and specific reporting forms (SF–429) is well beyond what is required by 2 CFR part 200.

Response: Title 2 CFR 200.329 states that in those instances where the Federal interest in real property attached is for a period of 15 years or more, the Federal awarding agency at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). As explained in the proposed rule, we believe this section does not expand reporting requirements, but clarifies the specific approach that will be required for awards made by the DOI for interests held longer than 15 years. The DOI made no changes to the proposed rule in response to this comment.

(ii) Effective Date

Comment: One commenter requested a clarification on the effective date of the final rule and whether it would apply retroactively to previously issued Federal awards.

Response: The FAIR applies to all DOI new awards or award revisions made after the effective date of the final rule. The DOI made no changes to the proposed rule in response to this comment.

(iii) Applicability of Other Regulations and Policies

Comment: Sixteen commenters submitted questions and comments regarding the FAIR's effect on terms and conditions for awards issued prior to the effective date of the rule and 2 CFR part 200, and whether the terms and conditions in DOI Federal assistance awards would be subject to the notice and comment process.

Response: The FAIR supplements the terms and conditions in 2 CFR part 200 in areas of particular interest for the DOI and gives more detailed instructions on how to implement 2 CFR part 200 with

regard to each section in this final rule. Program offices may impose additional programmatic and grants administration requirements via agency policy statements, Notice of Funding Opportunity announcements, and terms and conditions of award. The DOI will not apply this rule retroactively. It will only be applied to new awards or award revisions made after the effective date of the final rule. The DOI made no changes to the proposed rule in response to this comment.

(iv) Conflicts of Interest (§ 1402.112)

Comment: Seven commenters expressed the desire for the regulatory language to be removed or revised to remove confusion and redundancy. Commenters stated that the requirement to disclose potential conflicts of interest, and any outstanding unresolved matters, has the potential for varying interpretations because subjectivity is involved. Commenters also distinguished between State and Federal requirements.

Response: Section 1402.112 is critical to ensure that recipients of Federal assistance awards disclose any conflicts of interest that might impede their ability to serve the public purpose of the award. While DOI recognizes that conflict of interest provisions are inherently subjective, the language in this final rule supplements the language in 2 CFR part 200, and provides some additional clarifications. Section 1402.112 removed paragraph (b) to be consistent with 2 CFR 200.318(c). This amendment also clarifies that States and local governments are permitted to follow their own conflict of interest policies. Further, § 1402.112, as proposed, provides *Review Procedures*, which are not included in 2 CFR part 200. As explained in the preamble of the proposed rule, the DOI believes that these sections are needed to ensure full transparency into any conflicts of interest that are held by potential award recipients.

(v) Mandatory Disclosure (§ 1402.113)

Comment: Three commenters expressed the desire for clarity on standards that would apply in making a determination and disclosure of potential conflicts. There was concern that this section will impose a disproportionate reporting burden on States, as States have multiple grantors and deal with multiple Offices of Inspector Generals. Also, the proposed rule does not state at what point an issue is determined to be “unresolved.” Is it unresolved when it is questioned, or only if it is outstanding after the

corrective action plan, or sometime in between?

Response: The DOI revised the language in this section to limit those “unresolved” items that are to be reported as those items that do not have an approved (by the awarding agency) corrective action plan in place and remain open.

(vi) Merit Review (§ 1402.204)

Comment: Four commenters raised questions about the merit review section, including concern over how competition requirements are defined. Commenters were concerned over using the word “maximum” to describe the type of competition. Commenters expressed the view that the use of a subjective word like maximum lends itself to significant differences in standards based on region/State, or even individuals, implementing the funding opportunity and could result in unequal opportunities nationwide. There was also a comment raised that the programmatic investment guidance outlined by congressional mandates may not be consistent with the current DOI Government Performance and Results Act Strategic Plan as required in § 1402.204.

Response: The Department made changes to the proposed rule in response to this comment by removing the following language: “It is also important for DOI bureaus and offices to create review systems for noncompetitively awarded discretionary . . .” and the word “maximum.” that originally appeared in the proposed rule at § 1402.204(a). DOI also revised § 1402.204 to add “unless otherwise required by statute” with respect to the current DOI Government Performance and Results Act Strategic Plan to clarify DOI does not intend to violate congressional mandates.

(vii) Specific Award Conditions (§ 1402.207(b))

Comment: One commenter requested clarification on paragraph (b) and the inclusion of all recipients. The commenter noted that most of this section is explicit in stating it applies for-profit entities, paragraphs (a) and (c). Paragraph (b) does not state for-profit entities explicitly, so does this mean this paragraph is for all recipients, regardless of whether it is for-profit or not?

Response: Paragraph (b) applies to both nonprofit and for-profit recipients. The DOI believed it was clear that both the for-profit and non-profit entities were covered by this provision, but to be explicit, introductory text was added as follows: “The following financial

assistance award terms and conditions always apply to non-profit and domestic for-profit entities:”

(viii) Lobbying Disclosure and Certification

Comment: One commenter suggested that the referenced section (§ 1402.208) is duplicate language already proposed in § 1402.112(d) and suggested removal.

Response: The DOI made changes to the proposed rule in response to this comment by deleting § 1402.208.

(ix) Indirect Cost Rates

Comment: Four commenters raised concern over the approval process and documentation for indirect cost rates required in § 1402.414. One commenter noted that the requirements stated in the rule have been in effect since 2014 and have been working well.

Response: The approval of programmatic deviations to negotiated indirect cost rates is handled on a case-by-case review and is at the discretion of each bureau’s grants program guidelines. The procedures outlined in this rule are consistent with 2 CFR part 200, and have been in place within DOI via policy guidance since 2014. Under this rule, a voluntary rate reduction should be confirmed in writing with the Financial Assistance Officer identified in the Notice of Funding Announcement. The voluntary rate reductions should be noted in the pre-award proposal documents submitted for review at the time of the application. Federal agencies may use a rate different from the negotiated rate for a class of awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based upon documented justification described within 2 CFR 200.414(c)(3). Indirect cost rate agreements are negotiated within 6 months from the time a grantee submits a complete and acceptable proposal package. Title 2 CFR part 200 allows grantees to develop and submit their indirect cost rate proposals 6 months after the end of their fiscal year. The DOI made no changes to the proposed rule in response to this comment.

IV. Conclusion

DOI reviewed and considered the comments received, and determined to adopt this final rule with the changes described and minor editorial changes.

V. Required Determinations

1. Regulatory Planning and Review (*Executive Orders 12866 and 13563*)

Executive Order (E.O.) 12866 provides that the OMB’s Office of Information

and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant. Executive Order 13563 reaffirms the principles of E.O. 12866, calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory objectives. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public, where these approaches are relevant, feasible, and consistent with regulatory objectives.

2. Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Department of the Interior generally does not award grants to small businesses. The vast majority of Interior grants are awarded to States, local governments, and not-for-profit organizations.

3. Small Business Regulatory Enforcement Fairness Act

The final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The Department of the Interior generally does not award grants to small businesses.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule establishes regulations for DOI financial assistance. DOI financial assistance is typically offered to States, local governments and not-for-profit institutions. It does not affect business relationships, employment, investment, productivity, innovations, or the ability of U.S.-based enterprises to compete internationally.

4. Unfunded Mandates Reform Act

This rule:

(a) Does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year.

(b) Does not have a significant or unique effect on State, local, or tribal governments, or the private sector.

(c) This regulation clarifies the applicability of two existing regulations—the regulatory requirement for reporting under 2 CFR 200.329—Reporting on Real Property, and the regulatory language establishing use of the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or “Yellow Book”) standard under 49 CFR 24.103—to financial assistance actions at the Department of the Interior. This regulation establishes a permitted standard for appraisals under 49 CFR 24.103 and specifies the required timing increments of reports under 2 CFR 200.329.

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this rule does not have significant takings implications. It does not impose any obligations on the public that would result in a taking. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This is because it will not substantially and directly affect the relationship between the Federal and State governments. Accordingly, a federalism summary impact statement is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) of this E.O. requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) of this E.O. requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation and recognition of their right to self-governance and tribal sovereignty. DOI has evaluated this rule under the Department’s consultation

policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effect on federally recognized Indian tribes and that consultation under the Department’s tribal consultation policy is not required.

9. Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

This regulation will require the use of the SF 429 to fulfill the requirement in 2 CFR 200.329. Each Bureau will submit a request for common form usage to the Office of Management and Budget for use of SF 429—Real Property Status Report—Cover Page, SF 429A—Real Property Status Report—Attachment A—General Reporting, and SF 429B—Real Property Status Report—Attachment B—Request to Acquire, Improve, or Furnish.

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Pursuant to Department Manual 516 DM 2.3A(2), section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement “policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject to the NEPA process, either collectively or case-by-case.”

11. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211; therefore, a Statement of Energy Effects is not required.

12. Plain Language

DOI is required by section 1(b)(12) of E.O. 12866 and Section 3(b)(1)(B) of E.O. 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that this rule:

- (a) Is logically organized;
- (b) Uses the active voice to address readers directly;
- (c) Uses common, everyday words and clear language rather than jargon;
- (d) Is divided into short sections and sentences; and
- (e) Uses lists and tables wherever possible.

List of Subjects in 2 CFR Part 1402

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities, Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grant programs—agriculture, Grant programs—business, Grant programs—communications, Grant programs—education, Grant programs—energy, Grant programs—health, Grant programs—housing and community development, Grant programs—social programs, Grants administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Incorporation by reference, Indians, Indians—education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Loan programs—agriculture, Loan programs—business and industry, Loan programs—communications, Loan programs—energy, Loan programs—health, Loan programs—housing and community development, Manpower training programs, Migrant labor, Mortgage insurance, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territories, Privacy, Renewable energy, Reporting and recordkeeping requirements, Rural areas, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small businesses, State and local governments, Student aid, Teachers, Telecommunications, Telephone, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds, Women.

For the reasons set forth in the preamble, the Department of the Interior revises 2 CFR part 1402 to read as follows:

**PART 1402—FINANCIAL ASSISTANCE
INTERIOR REGULATION,
SUPPLEMENTING THE UNIFORM
ADMINISTRATIVE REQUIREMENTS,
COST PRINCIPLES, AND AUDIT
REQUIREMENTS FOR FEDERAL
AWARDS**

Subpart A—Definitions

Sec.

- 1402.1 Definitions.
- 1402.2 Employment.
- 1402.3 Financial Assistance Officer.
- 1402.4 Foreign entity.
- 1402.5 Non-Federal entity.
- 1402.6 Real property.

Subpart B—General Provisions

- 1402.100 Purpose.
- 1402.101 To whom does this part apply?
- 1402.102 Are there any exceptions to this part?
- 1402.103 What other policies or procedures must non-Federal entities follow?
- 1402.104–1402.111 [Reserved]
- 1402.112 What are the conflict of interest policies?
- 1402.113 What are the mandatory disclosure requirements?
- 1402.114–1402.203 [Reserved]

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

- 1402.204 What are the merit review requirements for competitive awards?
- 1402.205 [Reserved]
- 1402.206 What are the FAIR requirements for domestic for-profit entities?
- 1402.207 What specific conditions apply?
- 1402.208–1402.299 [Reserved]

**Subpart D—Post Federal Award
Requirements**

- 1402.300 What are the statutory and national policy requirements?
- 1402.301–1402.314 [Reserved]
- 1402.315 What are the requirements for the availability of data?
- 1402.316–1402.328 [Reserved]
- 1402.329 What are the requirements for land acquired under an award?
- 1402.330–1402.413 [Reserved]
- 1402.414 What are the negotiated indirect cost rate deviation policies?
- 1402.415–1402.999 [Reserved]

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

Subpart A—Definitions

§ 1402.1 Definitions.

The definitions in this subpart are for terms used in this part. For terms used in this part that are not defined, the definitions in 2 CFR part 200 apply. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities.

§ 1402.2 Employment.

Employment includes any form of non-Federal employment or business

relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as, or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee of the other organization.

§ 1402.3 Financial Assistance Officer.

Financial Assistance Officer means a person with the authority to enter into, administer, and/or terminate financial assistance awards (including grants and cooperative agreements); and make related determinations and findings.

§ 1402.4 Foreign entity.

Foreign entity means both “foreign public entity” and “foreign organization,” as defined in 2 CFR 200.46 and 200.47.

§ 1402.5 Non-Federal entity.

Non-Federal entity means a State, local government, Indian tribe, institution of higher education (IHE), for-profit entity, or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

§ 1402.6 Real property.

Real property has the same meaning as set forth in 2 CFR 200.85, except that the definition in this section also applies to legal ownership interests in land such as easements.

Subpart B—General Provisions

§ 1402.100 Purpose.

(a) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 apply to the Department of the Interior. This part adopts, as the Department of the Interior (DOI) policies and procedures, the Office of Management and Budget’s (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in 2 CFR part 200. The Uniform Guidance applies in full except as stated in this part.

(b) This part establishes DOI financial assistance regulations that implement or supplement the OMB’s Uniform Guidance. It is designed to ensure that financial assistance is administered in full compliance with applicable law, regulation, policy, and best practices to ensure the American people get the most value from the funds DOI awards on financial assistance. For supplemental guidance, DOI has adopted section numbering that corresponds to related OMB guidance in 2 CFR part 200.

(c) This part extends 2 CFR part 200, subparts A through E, policies and procedures to foreign public entities and foreign organizations as allowed by 2 CFR 200.101, except as indicated throughout this part.

§ 1402.101 To whom does this part apply?

(a) This part applies to all DOI grant-making activities and to any non-Federal entity that applies for, receives, operates, or expends funds from a DOI Federal award after October 29, 2019, unless otherwise authorized by Federal statute.

(b) This part applies to foreign entity applicants and recipients, except where the DOI office or bureau determines that the application of this part would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government (see § 1402.102).

(1) Foreign entities are subject to the definitions and requirements in 2 CFR part 200, subparts A through E, and as supplemented by this part. In addition to the general requirements in 2 CFR part 200, foreign entities must follow the special considerations and requirements for different classes of recipients in subparts A through E as follows, unless otherwise instructed in this part:

(i) Foreign public entities are to follow those for States, with the exception of the State payment procedures in 2 CFR 200.305(a). Foreign public entities must follow the payment procedures for non-Federal entities other than States;

(ii) Foreign nonprofit organizations are to follow those for nonprofits; and

(iii) Foreign higher education institutions are to follow those for Institutions of Higher Education (IHEs).

(2) [Reserved]

§ 1402.102 Are there any exceptions to this part?

(a) Awards made in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, 88 Stat. 2204), as amended, are governed by 25 CFR parts 900 and 1000, and by 2 CFR part 200, subparts E and F.

(b) Exceptions for individual foreign entities to the requirements in this part may be authorized by the Director, Office of Grants Management. Such exceptions must be made in accordance with written bureau or office policy and procedures.

(1) Foreign entities must request any exception to a requirement established in this part in writing. Such requests must be submitted to the funding bureau or office by an authorized

official of the foreign entity, and must provide sufficient pertinent background information, including:

(i) Identification of the requirement under this part that is inconsistent with an in-country statute or regulation to which the foreign entity is subject;

(ii) A complete description of the in-country statute or regulation, including a description of how it prohibits or otherwise limits the foreign entity's ability to comply with the identified requirement under this part; and

(iii) Identification of the entity's name, DOI award(s) affected, and point of contact for the request.

(2) The Director, Office of Grants Management may approve exceptions for individual foreign entities to the requirements of this part only when it has been determined that the requirement to be waived is inconsistent with either the international obligations of the United States or the statutes or regulations of a foreign government. Bureaus and offices will communicate exception request decisions to the requesting entity in writing.

(3) Submissions by public international organization submissions of any assurances, certifications or representations required for and related to a Federal award do not constitute a waiver of immunities provided under the International Organizations Immunities Act (22 U.S.C. 288–288f).

(4) Foreign entities are not subject to the following requirements in 2 CFR part 200:

(i) Foreign entities may be subject to other applicable international or in-country alternatives to generally accepted accounting principles (GAAP), such as the International Financial Reporting Standards (IFRS). See 2 CFR 200.403, Factors affecting allowability of costs;

(ii) 2 CFR 200.321, Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms; and

(iii) Section 6002 of the Solid Waste Disposal Act. See 2 CFR 200.322, Procurement of recovered materials.

§ 1402.103 What other policies or procedures must non-Federal entities follow?

Non-Federal entities must follow bureau or office policies and procedures as communicated in notices of funding opportunity (NOFOs) and award terms and conditions. In the event such policies or procedures conflict with 2 CFR part 200 or this part, 2 CFR part 200 or this part will supersede, unless otherwise authorized by Federal statute.

§§ 1402.104–1402.111 [Reserved]

§ 1402.112 What are the conflict of interest policies?

This section shall apply to all non-Federal entities. NOFOs and financial assistance awards must include the full text of the conflict of interest provisions in paragraphs (a) through (e) of this section.

(a) *Applicability.* (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.

(2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

(b) *Notification.* (1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112.

(2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

(c) *Restrictions on lobbying.* Non-Federal entities are strictly prohibited from using funds under a grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.

(d) *Review procedures.* The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

(e) *Enforcement.* Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for noncompliance, including suspension or debarment (see also 2 CFR part 180).

§ 1402.113 What are the mandatory disclosure requirements?

In addition to the disclosures required under 2 CFR 200.112 and 200.113, non-

Federal entities, including applicants for all Federal awards, must disclose in writing any potential or actual conflict of interest to the DOI awarding agency or pass-through entity. Non-Federal entities and applicants must also disclose any outstanding unresolved matters with the Government Accountability Office or an Office of Inspector General when submitting a proposal and through the life of the award as needed. Unresolved items are those items that do not have an approved (by the awarding agency) corrective action plan in place and remain open.

§§ 1402.114–1402.203 [Reserved]

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

§ 1402.204 What are the merit review requirements for competitive awards?

The requirements in this section apply to competitive grants and cooperative agreements unless otherwise authorized by Federal statute. Merit review procedures must be described or incorporated by reference in NOFOs (see 2 CFR part 200, appendix I, and 2 CFR 200.203). Pre-award considerations for both discretionary competitive and noncompetitive awards shall take into account the alignment of the award's purpose, goals, and measurement with the current DOI Government Performance and Results Act Strategic Plan including, the mission statement, vision, values, goals, objectives, strategies, and performance metrics therein, unless otherwise prohibited by statute.

(a) *Competition in grant and cooperative agreement awards.* Competition is expected in awarding discretionary funds, unless otherwise directed by Congress. When grants and cooperative agreements are awarded competitively, DOI requires that the competitive process be fair and impartial, that all applicants be evaluated only on the criteria stated in the announcement, and that no applicant receive an unfair competitive advantage. All competitive funding announcements, and all modifications/amendments to those announcements, must be posted on *Grants.gov* (www.grants.gov).

(b) *Independent objective evaluation of financial assistance applications and proposals.* Bureaus and offices must conduct reviews of applications submitted in response to the announcement and for selecting applicants for award following established merit review procedures. Bureaus and offices must conduct

comprehensive, impartial, and objective review of applications based on the criteria contained in the announcement by individuals who have no conflicts of interest with respect to the competing proposal/applications or applicants. Bureaus and offices must ensure reviewers are qualified, applications are scored on the basis of announced criteria, consideration is given to the level of applicant risk and past performance, applications are ranked, and funding determinations are made.

(c) *Evaluation and Selection Plan for notice of funding opportunities.* Bureaus and offices must develop an Evaluation and Selection Plan in concert with the notice of funding opportunity to ensure consistency, and to outline and document the selection process. The Evaluation and Selection Plan should be finalized prior to the release of the notice of funding opportunity. An Evaluation and Selection Plan is comprised of five basic elements:

(1) Merit review factors and sub-factors;

(2) A rating system (*e.g.*, adjectival, color coding, numerical, or ordinal);

(3) Evaluation standards or descriptions that explain the basis for assignment of the various rating system grades/scores;

(4) Program policy factors; and

(5) The basis for selection.

(d) *Basic review standards.* Bureaus and offices must initially screen applications/proposals to ensure that they meet the standards in paragraphs (e) through (g) of this section before they are subjected to a detailed evaluation utilizing a merit review process specified in paragraph (h) of this section. The review system should include three phases: Initial Screening, Threshold Screening, and a Merit Review Evaluation Screening. Bureaus and offices may remove an application from funding consideration if it does not pass the basic eligibility screening per paragraphs (e) through (g) of this section.

(e) *Completeness.* Bureaus and offices may return applications/proposals that are incomplete or otherwise fail to meet the requirements of the *Grants.gov* announcement to the applicant to be corrected, modified, or supplemented, or may reject the application/proposal outright. Until the application/proposal meets the substantive requirements of the announcement and this part, it shall not be given detailed evaluation. Bureaus and offices may use discretion to determine the length of time for applicants to resolve application deficiencies.

(f) *Timeliness.* Bureaus and offices must consider the timeliness of the

application submission. Applications that are submitted beyond the announced deadline date must be removed from the review process.

(g) *Threshold Screening.* Bureaus and offices are responsible for screening applications and proposals for the adequacy of the budget and compliance with statutory and other requirements. The SF-424 and budget information (SF-424A, SF-424C, or OMB-approved alternate budget data collection) must be reviewed according to Department of the Interior policy.

(h) *Merit Review Evaluation Screening.* This is the final review stage where the technical merit of the application/proposal is reviewed. In the absence of a program rule or statutory requirement, program officials shall develop criteria that include all aspects of technical merit. Bureaus and offices shall develop criteria that are conceptually independent of each other, but all-encompassing when taken together. While criteria will vary, the basic criteria shall focus reviewers' attention on the project's underlying merit (*i.e.*, significance, approach, and feasibility). The criteria shall focus not only on the technical details of the proposed project but also on the broader importance or potential impact of the project. The criteria shall be easily understood.

(i) *Risk assessments.* Bureaus and offices must also consider risk thresholds during application/proposal review process. Elements to be considered may include organization; single audit submissions, past performance; availability of necessary resources, equipment, or facilities; financial strength and management capabilities; and procurement procedures; or procedures for selecting and monitoring subrecipients or sub-vendors, if applicable. For all non-Federal entities that receive an award, the Financial Assistance Officer must document the risk analysis.

(j) *Requirements for proposal evaluators.* Upon receipt of a Memorandum of Appointment, each proposal evaluator and advisor must sign and return a Conflict of Interest Certificate to the Financial Assistance Officer. If an actual or potential conflict of interest exists, the appointee may not evaluate or provide advice on a potential applicant's proposal until the conflict has been resolved or mitigated. Further, each proposal evaluator or advisor must agree to comply with any notice or limitation placed on the application. Upon completion of the review, the proposal evaluator or advisor shall return or destroy all copies of the application and accompanying

proposals (or abstracts) to DOI; and unless authorized by the Financial Assistance Officer or agency designee, the reviewer shall not contact the non-Federal entity concerning any aspect of the application.

§ 1402.205 [Reserved]

§ 1402.206 What are the FAIR requirements for domestic for-profit entities?

(a) *Requirements for domestic for-profit entities.* (1) Section 1402.207(a) contains standard award terms and conditions that always apply to for-profit entities and § 1402.207(b) contains terms that apply to sub-awards or contracts with for-profit entities over the simplified acquisition threshold. Bureaus and offices must incorporate into awards to domestic for-profit organizations the award terms and conditions that always apply, either directly or by reference.

(2) Bureaus and offices may apply the administrative guidelines in subparts A through D of 2 CFR part 200, the cost principles at 48 CFR part 31, subpart 31.2, and the procedures for negotiating indirect costs (detailed in § 1402.414) to domestic for-profit entities.

(3) Depending on the nature of a particular program, offices and bureaus may additionally develop program-specific administrative guidelines for domestic for-profits based on the requirements in 2 CFR part 200, subparts A through D, but may not apply more restrictive requirements than the requirements in 2 CFR part 200, subparts A through D, unless approved by OMB through a request to the Director, Office of Grants Management.

(b) *Requirements for award terms and conditions.* Bureau and office award terms and conditions must be managed in accordance with the requirements in 2 CFR 200.210, Information contained in a Federal award.

§ 1402.207 What specific conditions apply?

(a) The following financial assistance award terms and conditions always apply to domestic for-profit entities:

(1) 2 CFR part 25, Universal Identifier and System for Award Management.

(2) 2 CFR part 170, Reporting Subawards and Executive Compensation Information.

(3) 2 CFR part 175, Award Term for Trafficking in Persons.

(4) 2 CFR part 1400, government-wide debarment and suspension (non-procurement).

(5) 2 CFR part 1401, Requirements for Drug-Free Workplace (Financial Assistance).

(6) 43 CFR part 18, New Restrictions on Lobbying. Submission of an application also represents the applicant's certification of the statements in 43 CFR part 18, appendix A, Certification Regarding Lobbying.

(7) 41 U.S.C. 4712, Whistleblower Protection for Contractor and Grantee Employees. The requirement in this paragraph (a)(7) applies to all awards issued after July 1, 2013.

(8) 41 U.S.C. 6306, Prohibition on Members of Congress Making Contracts with the Federal Government. No member of or delegate to the United States Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this paragraph (a)(8) shall not be construed to extend to an award made to a corporation for the public's general benefit.

(9) Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving. Recipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the Executive Order.

(b) The following financial assistance award terms and conditions always apply to non-profit and domestic for-profit entities. The recipient shall insert the following clause in all subawards and contracts related to the prime award that are over the simplified acquisition threshold, as defined in the Federal Acquisition Regulation:

All awards and related subawards and contracts over the Simplified Acquisition Threshold, and all employees working on applicable awards and related subawards and contracts, are subject to the whistleblower rights and remedies in accordance with the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

Recipients, their subrecipients and contractors that are awarded contracts over the Simplified Acquisition Threshold related to an applicable award, shall inform their employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The following award terms and conditions apply to for-profit recipients as specified in 2 CFR 200.101:

(1) Administrative requirements: 2 CFR part 200, subparts A through D.

(2) Cost principles: 48 CFR part 31, subpart 31.2, Contracts with Commercial Organizations.

(3) Indirect cost rate negotiations. For information on indirect cost rate negotiations, contact the Interior

Business Center (IBC) Indirect Cost Services Division by telephone at (916) 566-7111 or by email at ics@ibc.doi.gov. Visit the IBC Indirect Cost Services Division website at http://www.doi.gov/ibc/services/Indirect_Cost_Services/index.cfm for more information.

§§ 1402.208–1402.399 [Reserved]

Subpart D—Post Federal Award Requirements

§ 1402.300 What are the statutory and national policy requirements?

(a) DOI bureaus and offices will communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of Federal Funding Accountability and Transparency Act (FFATA), which includes requirements on executive compensation, and also requirements implementing the FFATA for the non-Federal entity at 2 CFR part 25, financial assistance use of universal identifier and system for award management, and 2 CFR part 170, Reporting Subaward and Executive Compensation Information. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.

(c) Recipients conducting work outside the United States are responsible for coordinating with appropriate United States and foreign government authorities as necessary to make sure all required licenses, permits, or approvals are obtained before undertaking project activities. DOI does not assume responsibility for recipient compliance with the laws, regulations, policies, or procedures of the foreign country in which the work is conducted.

(d) As required in 54 U.S.C. 307101, World Heritage Convention, prior to the approval of any undertaking outside the United States that may directly and adversely affect a property that is on the World Heritage List or on the applicable country's equivalent of the National Register of Historic Places, the DOI bureau or office having direct or indirect jurisdiction over the undertaking shall take into account the effect of the undertaking on the property for purposes of avoiding or mitigating any adverse effect.

(e) Foreign entities are responsible for complying with all requirements of the Federal award. For awards to foreign entities, this includes:

(1) 2 CFR part 25, Universal Identifier and System for Award Management, unless the entity meets one or more qualifying conditions and is exempted by the awarding bureau or office as provided for in 2 CFR part 25;

(2) 2 CFR part 170, Reporting Subaward and Executive Compensation Information;

(3) 2 CFR part 175, Award Term for Trafficking in Persons. This term is required in awards to foreign private entities. The term is also required in awards to foreign public entities, if funding could be provided under the award to a foreign private entity as a subrecipient;

(4) 2 CFR part 1400, Nonprocurement Debarment and Suspension. Awards to foreign organizations are covered transactions under the DOI nonprocurement debarment and suspension program. Awards to foreign public entities are not covered transactions;

(5) 43 CFR part 18, New Restrictions on Lobbying. Foreign entities shall file the 43 CFR part 18, appendix A, certification, and a disclosure form, if required, with each application for Federal assistance. See also 31 U.S.C. 1352, Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions; and

(6) Public Law 113-235 (128 Stat. 2391, Dec. 16, 2014). Federal award recipients are prohibited from requiring employees or contractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

§§ 1402.301–1402.314 [Reserved]

§ 1402.315 What are the requirements for availability of data?

(a) All data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, valuation products or other scientific assessments in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual, resulting from a financial assistance agreement is available for use by the Department of the Interior, including being available in a manner that is sufficient for independent verification.

(b) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments, produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments, for Federal purposes, including to allow for meaningful third-party evaluation.

(c) Bureaus and offices of the Department of the Interior must include the language in paragraphs (a) and (b) of this section in full text in all NOFOs and financial assistance agreements.

§§ 1402.316–1402.328 [Reserved]

§ 1402.329 What are the requirements for land acquired under an award?

(a) *Approval prior to land purchases.* Bureaus and offices must ensure compliance with the prior written approval requirements for land acquisition in 2 CFR 200.439. Whenever a recipient is seeking DOI's approval to use award funds to purchase an interest in real property, the OMB-approved governmentwide data elements for collection of real property reporting information, as of October 29, 2019, SF-429-B, Request to Acquire, Improve, or Furnish, or approved alternate standardized data collection, must be submitted to the bureau or office. The Financial Assistance Officer is responsible for ensuring that this requirement is met. All aspects of the purchase must be in compliance with applicable laws and regulations relating to purchases of land or interests in land.

(b) *Appraisal requirements for land purchases.* (1) Unless a waiver valuation applies in accordance with 49 CFR 24.102(c), land or interests in land that will be acquired under the award must be appraised in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions, (UASFLA or the "Yellow Book"), developed and promulgated by the Interagency Land Acquisition Conference, 1155 15th Street NW, Suite 1111, Washington, DC 20005, by a real property appraiser licensed or certified by the State or States in which the property is located. The appraisal report shall be reviewed by a qualified review appraiser that meets qualifications established by the DOI Appraisal and Valuation Services Office (AVSO), which is responsible for appraisal and valuation services and

policy across the Department. Bureaus and offices shall ensure that funds are not disbursed for purchases of land or interests in land without an appraisal accompanied by a written appraisal review report that complies with standards approved by AVSO. Where appraisals are required to support federally assisted land acquisitions, AVSO has oversight responsibilities for these appraisals, including those purchased through financial assistance actions in the various grant programs within the Department. AVSO will coordinate with grant programs to conduct periodic internal control review of appraisal and appraisal review reports prepared in conjunction with grant applications for land acquisition.

(2) The Director of the Federal Register approves the material referenced in this section for incorporation by reference into this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the Appraisal and Valuation Services Office within the Department of the Interior located at 1849 C St. NW, Washington, DC 20240, (202) 208-3466, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(i) Interagency Land Acquisition Conference, 1155 15th Street NW, Suite 1111, Washington, DC 20005.

(A) Uniform Appraisal Standards for Federal Land Acquisitions, Sixth Edition, 2016.

(B) You may obtain a print copy or interactive electronic version from The Appraisal Foundation at <https://www.appraisalfoundation.org/iMIS/itemDetail?iProductCode=351&Category=PUB> or a read-only version from the U.S. Department of Justice at <https://www.justice.gov/file/408306/download>.

(ii) [Reserved]

(c) *Foreign land acquisition.* Land to be acquired under an award that is located outside the United States must be appraised by an independent real property appraiser licensed or certified in the country in which the property is located in accordance with any in-country appraisal standards, if they exist, or with International Valuation Standards, when such appraisals are available and financially feasible. Otherwise, the non-Federal entity must use the most widely accepted business practice for property valuation in the country where the property is located and provide to the awarding DOI bureau

or office a detailed explanation of the methodology used to determine value.

(d) *Requirements for recipient reporting on real property purchases.* (1) For all financial assistance actions where real property is acquired under the Federal award, the recipient must submit reports on the status of the real property. Bureaus and offices must ensure recipients receive written notification of those reporting requirements, including reporting frequency/schedule, report content requirements, and submission instructions, at the time of award.

(2) If the interest in the land will be held for less than 15 years, reports must be submitted annually. If the interest in the land will be held for 15 years or more, then the recipient must submit the first report within one year of the period of performance end date of the award and then, at a minimum, every five years thereafter.

(3) The reports must be submitted to the Financial Assistance Officer within the period of performance of the award. After the end of the period of performance, reports must be submitted to a designated individual. Each bureau must have a process in place to designate specific individuals to receive, and review and accept the report.

(4) Recipients must use the OMB-approved governmentwide data elements for collection of real property reporting information, as of October 29, 2019, the Real Property Status Report Standard Form (SF) 429-A, General Reporting, to report status of land or interests in land under Federal financial assistance awards. Bureaus or offices may request to use an equivalent reporting format. The Director, Office of Grants Management must approve alternate equivalent formats.

(5) Reports must include, at a minimum, sufficient information to demonstrate that all conditions imposed on the land use are being met, and a signed certification to that fact by the recipient of the financial assistance award.

(6) The Financial Assistance Officer must indicate the reporting schedule, including due dates, in the award document. The schedule must conform with the frequency required in paragraph (d)(2) of this section. For awards issued prior to October 29, 2019, the recipient must contact the program to establish due dates for reports going forward. If there is already a reporting schedule in place, then the recipient and the program shall ensure that the schedule is updated to conform with this part prior to the due date of the next scheduled report.

§§ 1402.330–1402.413 [Reserved]**§ 1402.414 What are the negotiated indirect cost rate deviation policies?**

(a) This section establishes DOI policies, procedures, and decision making criteria for using an indirect cost rate that differs from the non-Federal entity's negotiated rate or approved rate for DOI awards. These are established in accordance with 2 CFR 200.414(c)(3) or (f).

(b) DOI accepts indirect cost rates that have been reduced or removed voluntarily by the proposed recipient of the award, on an award-specific basis.

(c) For all deviations to the Federal negotiated indirect cost rate, including statutory, regulatory, programmatic, and voluntary, the basis of direct costs against which the indirect cost rate is applied must be:

(1) The same base identified in the recipient's negotiated indirect cost rate agreement, if the recipient has a federally negotiated indirect cost rate agreement; or

(2) The Modified Total Direct Cost (MTDC) base, in cases where the recipient does not have a federally negotiated indirect cost rate agreement or, with prior approval of the awarding bureau or office, when the recipient's federally negotiated indirect cost rate agreement base is only a subset of the MTDC (such as salaries and wages) and the use of the MTDC still results in an overall reduction in the total indirect cost recovered. MTDC is the base defined by 2 CFR 200.68, Modified Total Direct Cost (MTDC).

(d) In cases where the recipient does not have a federally negotiated indirect cost rate agreement, DOI will not use a modified rate based upon total direct cost or other base not identified in the federally negotiated indirect cost rate agreement or defined within 2 CFR 200.68.

(1) *Indirect cost rate deviation required by statute or regulation.* In accordance with 2 CFR 200.414(c)(1), a Federal agency must use a rate other than the Federal negotiated rate where required by Federal statute or regulation. For such instances within DOI, the official award file must document the specific statute or regulation that required the deviation.

(2) *Indirect cost rate reductions used as cost-share.* Instances where the recipient elects to use a rate lower than the federally negotiated indirect cost rate, and uses the balance of the unrecovered indirect costs to meet a cost-share or matching requirement required by the program and/or statute, are not considered a deviation from 2 CFR 200.414(c), as the federally

negotiated indirect cost rate is being applied under the agreement in order to meet the terms and conditions of the award.

(3) *Programmatic indirect cost rate deviation approval process.* Bureaus and offices with DOI approved deviations in place prior to October 29, 2019 are not required to resubmit those for reconsideration following the procedures in this paragraph (d)(3). The following requirements apply for review, approval, and posting of programmatic indirect cost rate waivers:

(i) *Program qualifications.* Programs that have instituted a program-wide requirement and governance process for deviations from federally negotiated indirect cost rates may qualify for a programmatic deviation approval.

(ii) *Deviation requests.* Deviation requests must be submitted by the responsible senior program manager to the DOI Office of Grants Management. The request for deviation approval must include a description of the program, and the governance process for negotiating and/or communicating to recipients the indirect cost rate requirements under the program. The program must make its governance documentation, rate deviations, and other program information publicly available.

(iii) *Approvals.* Programmatic deviations must be approved, in writing, by the Director, Office of Grants Management. Approved deviations will be made publicly available.

(4) *Voluntary indirect cost rate reduction.* On any single award, an applicant and/or proposed recipient may elect to reduce or eliminate the indirect cost rate applied to costs under that award. The election must be voluntary and cannot be required by the awarding official, NOFO, program, or other non-statutory or non-regulatory requirements. For these award-specific and voluntary reductions, DOI can accept the lower rate provided the notice of award clearly documents the recipient's voluntary election. Once DOI has accepted the lower rate, that rate will apply for the duration of the award.

(5) *Unrecovered indirect costs.* In accordance with 2 CFR 200.405, indirect costs not recovered due to deviations to the federally negotiated rate are not allowable for recovery via any other means.

§§ 1402.415–1402.499 [Reserved]

Scott J. Cameron,

Principal Deputy Assistant Secretary for Policy Management and Budget.

[FR Doc. 2019–18650 Filed 8–29–19; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF HOMELAND SECURITY**6 CFR Part 5**

[Docket No. DHS–2019–0031]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Immigration and Customs Enforcement–016 FALCON Search and Analysis System of Records

AGENCY: U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is issuing a final rule to amend its regulations to exempt portions of an updated and reissued system of records titled, “Department of Homeland Security/U.S. Immigration and Customs Enforcement–016 FALCON Search and Analysis System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective August 30, 2019.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Jordan Holz, (202) 732–3300, Acting Privacy Officer, Immigration and Customs Enforcement, Washington, DC 20536. For privacy issues please contact: Jonathan R. Cantor (202)–343–1717, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:**I. Background**

DHS U.S. Immigration and Customs Enforcement (ICE) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (82 FR 20844, May 4, 2017) proposing to exempt portions of DHS/ICE–016 FALCON Search and Analysis (FALCON–SA) System of Records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. This system of records was published concurrently in the **Federal Register** (82 FR 20905, May 4, 2017), and DHS sought comments on both the NPRM and System of Records Notice (SORN). It should be noted that the NPRM was over-inclusive regarding Privacy Act exemptions. This final rule appropriately limits the exemptions to what is permitted under the Privacy Act.