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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1800

RIN 2700-AE49

[Document Number NASA-19-028: Docket Number NASA-2019-0003]

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

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule removes Certifications, Assurances, and Representations and Terms and Conditions from NASA's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards regulations and all references to both because this information is already available in NASA's Grant and Cooperative Agreements Manual (GCAM). This direct final rule also removes Deviations for terms, conditions, and forms and makes minor administrative changes.

DATES: This direct final rule is effective [INSERT DATE OF 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments due on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Antanese Crank (202) 358-4683.

SUPPLEMENTARY INFORMATION:

I. Direct Final Rule

NASA has determined that this rulemaking meets the criteria for a direct final rule because it makes non-substantive changes by removing Appendix A, Certifications, Assurances, and Representations and Appendix B, Terms and Conditions, as well as references to both because this information is already available in NASA's GCAM accessible at https://prod.nais.nasa.gov/pub/pub_library/srba/documents/Grant_and_CooperativeAgreementManual.doc. However, if the Agency receives a significant adverse comment, it will withdraw this direct final rule by publishing a notice in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

II. Background

In December 2014, the Office of Management and Budget (OMB), together with NASA and the other Federal awarding agencies, issued a joint interim rule to implement new guidance at 2 Code of Federal Regulations (CFR) 200 Subtitle B, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). OMB used the rulemaking procedure when promulgating this common rule on grants and cooperative agreements and required each agency to adopt OMB's common rule on grants and cooperative agreements. Although statutorily unnecessary, in 2015, NASA used rulemaking procedures to incorporate portions of the Uniform Guidance into its Federal Regulations at 2 CFR 1800 because NASA's Grants Management function was affiliated with Procurement Operations at the

time. A review of all 32 Federal Grant awarding agencies and how they handled the issuance of the Uniform Guidance indicated that NASA was the only Agency to include Terms and Conditions in its Federal Regulations. The changes listed below will reduce burdens by removing unnecessary requirements in Federal Regulations, as well as allow NASA to streamline its practices to comport with other Federal grant awarding agencies. NASA is issuing a direct final rule to:

1. Remove Appendix A, Certifications, Assurances, and Representations.
2. Remove Appendix B, Terms and Conditions.
3. Remove references to the certification and representations from section 1800.208.
4. Remove references to the terms and conditions from section 1800.210.
5. Remove Deviations for terms, conditions, and forms and removes and reserves section 1800.6.
6. Add references to NASA's GCAM.

III. Statutory Authority

51 U.S.C. 20113 (e), Pub. L. 97-258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

IV. Regulatory Analysis:

Executive Orders 12866 and Executive Order 13563

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

This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Fees assessed by the Administration are nominal. Further, the “small entities” that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

Paperwork Reduction Act Statement

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. § 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 2 CFR Part 1800:

Grant programs, grants administration.

For reasons set forth in the preamble, NASA amends 2 CFR part 1800 as follows:

**PART 1800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES,
AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

1. The authority citation for part 1800 continues to read as follows:

Authority: 51 U.S.C. 20113 (e), Pub. L. 97-258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

§ 1800.3 [Amended]

2. Amend § 1800.3, paragraph (d)(2) by removing the words “Procurement, Program Operations” and add in their place “the Chief Financial Officer, Policy”.

§ 1800.5 [Amended]

3. Amend § 1800.5 by adding the acronym “(GCAM)” after the words “Grants and Cooperative Agreements Manual”.

§ 1800.6 [Removed and Reserved]

4. Remove and reserve § 1800.6.

Subpart A—Acronyms and Definitions

5. Amend § 1800.10 by adding in alphabetical order an entry for “GCAM Grants and Cooperative Agreements Manual” to read as follows:

§ 1800.10 Acronyms.

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GCAM Grants and Cooperative Agreements Manual

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6. Amend § 1800.11, in paragraph (a) by revising the definition of “Minority Institutions (MIs)” to read as follows:

§ 1800.11 Definitions

(a)***

Minority Institutions (MIs) means an institution of higher education whose enrollment of a single minority or a combination of minorities (minority meaning American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group under-represented in science and engineering.) exceeds 50 percent of the total enrollment, as defined by section 365(3) of the Higher Education Act (HEA) (20 U.S.C. 1067k(3)).

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

7. Revise § 1800.208 to read as follows:

§ 1800.208 Certifications and representations.

The certifications and representations for NASA may be found in Exhibit C of the GCAM.
https://prod.nais.nasa.gov/pub/pub_library/srba.

8. Revise § 1800.210 to read as follows:

§ 1800.210 Information contained in a Federal award.

NASA waives the requirement for the inclusion of indirect cost rates on any notice of Federal award for commercial firms with no cost sharing requirement. The terms and conditions for NASA may be found in Exhibit D of the GCAM. https://prod.nais.nasa.gov/pub/pub_library/srba.

Subpart C—Post Federal Award Requirements

9. Revise § 1800.339 to read as follows:

§ 1800.339 Termination.

NASA reserves the ability to terminate a Federal award in accordance with § 200.338 through § 200.342 and as set forth in section D21 of the GCAM.

Appendix A to Part 1800 [Removed]

10. Remove appendix A to part 1800.

Appendix B to Part 1800 [Removed]

11. Remove appendix B to part 1800.

Cheryl E. Parker

NASA Federal Register Liaison Officer

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