

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

**Subpart A—Acronyms and Definitions
[Reserved]**

Subpart B—General Provisions

- 1500.1 Adoption of 2 CFR part 200.
- 1500.2 Applicability.
- 1500.3 Exceptions.
- 1500.4 Supersession.

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

1500.5 Fixed Amount Awards.

Subpart D—Post Federal Award Requirements.

STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

- 1500.6 Retention requirements for records.
- 1500.7 Program Income.
- 1500.8 Revision of budget and program plans.

PROCUREMENT STANDARDS

- 1500.9 General Procurement Standards.
- 1500.10 Use of the same architect or engineer during construction.

PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

- 1500.11 Quality Assurance.

Subpart E—Disputes.

- 1500.12 Purpose and scope of this subpart.
- 1500.13 Definitions.
- 1500.14 Submission of Appeal.
- 1500.15 Notice of receipt of Appeal to Affected Entity.
- 1500.16 Determination of Appeal.
- 1500.17 Request for review.
- 1500.18 Notice of receipt of request for review.
- 1500.19 Determination of request for review.

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SOURCE: 79 FR 76050, Dec. 19, 2014, unless otherwise noted.

Subpart A—Acronyms and Definitions [Reserved]

Subpart B—General Provisions

§ 1500.1 Adoption of 2 CFR Part 200.

Under the authority listed above the Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR part 200), as supplemented by this part, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. This part satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by this part. EPA also has programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

§ 1500.2 Applicability.

Uniform administrative requirements and cost principles (Subparts A through E of 2 CFR part 200 as supplemented by this part) apply to foreign public entities or foreign organizations, except where EPA determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government.

§ 1500.3 Exceptions.

Consistent with 2 CFR 200.102(b):

(a) In the EPA, the Director, Office of Grants and Debarment or designee, is authorized to grant exceptions on a case-by-case basis for non-Federal entities.

(b) The EPA Director or designee is also authorized to approve exceptions, on a class or an individual case basis, to EPA program specific assistance regulations other than those which implement statutory and executive order requirements.

§ 1500.4 Supersession.

Effective December 26, 2014, this part supersedes the following regulations under Title 40 of the Code of Federal Regulations:

(a) 40 CFR part 30, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher

§ 1500.5

Education, Hospitals, and other Non-profit Organizations.”

(b) 40 CFR part 31, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.”

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

§ 1500.5 Fixed Amount Awards.

In the EPA, programs awarding fixed amount awards will do so in accordance with guidance issued from the Office of Grants and Debarment. (See 2 CFR 200.201(b)).

Subpart D—Post Federal Award Requirements.

STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

§ 1500.6 Retention requirements for records.

(a) In the EPA, some programs require longer retention requirements for records by statute.

(b) When there is a difference between the retention requirements for records of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200.333) and the applicable statute, the non-federal entity will follow to the retention requirements for records in the statute.

§ 1500.7 Program Income.

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

(b) Use of Program Income. The default use of program income for EPA awards is addition. The program income shall be used for the purposes and under the conditions of the assistance agreement. (See 2 CFR 200.307(e)(2))

(c) Brownfields Revolving Loan. To continue the mission of the Brownfields Revolving Loan fund, recipients may use grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to

2 CFR Ch. XV (1–1–15 Edition)

operate the revolving loan fund or some other brownfield purpose as outlined in their closeout agreement.

§ 1500.8 Revision of budget and program plans.

Pre-award Costs. EPA award recipients may incur allowable project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of EPA. All costs incurred before EPA makes the award are at the recipient's risk. EPA is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs.

PROCUREMENT STANDARDS

§ 1500.9 General Procurement Standards.

(a) *Payment to consultants.* EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors to the maximum daily rate for level 4 of the Executive Schedule unless a greater amount is authorized by law. (Recipient's may, however, pay consultants more than this amount with non EPA funds.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices. Contracts with firms for services which are awarded using the procurement standards in Subpart D of 2 CFR part 200 are not affected by this limitation.

(b) Subawards with firms for services which are awarded using the procurement standards in 2 CFR 200.317 through 2 CFR 200.326 are not affected by this limitation.

§ 1500.10 Use of the same architect or engineer during construction.

(a) If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided

Environmental Protection Agency

§ 1500.12

any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(1) The recipient received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(2) The award official approves non-competitive procurement under 2 CFR 200.320(f) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(3) The recipient attests that:

(i) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subaward for services during construction; and

(ii) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(iii) No employee, officer or agent of the recipient, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(iv) None of the recipient's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subawards.

(b) However, if the recipient uses the procedures in paragraph (a) of this section to retain an architect or engineer, any Step 3 subawards between the architect or engineer and the grantee must meet all of the other procurement provisions in 2 CFR 200.317 through 200.326.

PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

§ 1500.11 Quality Assurance.

(a) Quality assurance applies to all assistance agreements that involve environmentally related data operations, including environmental data collection, production or use.

(b) Recipients shall develop a written quality assurance system commensu-

rate with the degree of confidence needed for the environmentally related data operations.

(c) If the recipient complies with EPA's quality policy, the system will be presumed to be in compliance with the quality assurance system requirement. The recipient may also comply with the quality assurance system requirement by complying with American National Standard ANSI/ASQ E4:2014: Quality management systems for environmental information and technology programs.

(d) The recipient shall submit the written quality assurance system for EPA review. Upon EPA's written approval, the recipient shall implement the EPA-approved quality assurance system.

(e) EPA Quality Policy is available at: <http://www.epa.gov/quality>.

(f) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51.

The material is available for inspection at the Environmental Protection Agency's Headquarters Library, Room 3340, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20004, (202) 566-0556. A copy is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibrlocations.html.

(1) American Society for Quality, 600 North Plankinton Avenue, Milwaukee, WI 53201, 1-800-248-1946, <http://asq.org>.

(i) American National Standard ANSI/ASQ E4:2014: Quality management systems for environmental information and technology programs—Requirements with guidance for use, approved February 4, 2014.

(ii) Reserved.

(2) Reserved.

Subpart E—Disputes

§ 1500.12 Purpose and scope of this subpart.

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

§ 1500.13

post-award assistance agreement disputes as described in §1500.13, except for:

(1) Assistance agreement competition-related disputes; and

(2) Any appeal process relating to an award official's determination that an entity is not qualified for award that may be developed pursuant to guidance implementing Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417, as amended).

(b) Pre-award and post-award disagreements between affected entities and EPA related to an assistance agreement should be resolved at the lowest level possible. If an agreement cannot be reached, absent any other applicable statutory or regulatory dispute provisions, affected entities must follow the dispute procedures outlined in this subpart.

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

(1) Decisions on requests for exceptions under §1500.3;

(2) Bid protest decisions under 2 CFR 200.318(k)

(3) National Environmental Policy Act decisions under 40 CFR part 6;

(4) Policy decisions of the EPA Internal Audit Dispute Resolution Process (formerly known as Audit Resolution Board); and

(5) Suspension and Debarment Decisions under 2 CFR parts 180 and 1532.

§ 1500.13 Definitions.

As used in this subpart:

(a) *Action Official (AO)* is the EPA official who authors the Agency Decision to the Affected Entity regarding a pre-award or post-award matter.

(b) *Affected Entity* is an entity that applies for and/or receives Federal financial assistance from EPA including but not limited to: State and local governments, Indian Tribes, Intertribal Consortia, Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and Individuals.

2 CFR Ch. XV (1-1-15 Edition)

(c) *Agency Decision* is the Agency's initial pre-award or post-award determination. The Agency Decision is sent by the Action Official (AO) to the Affected Entity electronically and informs them of their dispute rights including appealing the Agency Decision to the DDO. Assistance Agreement Appeal (or Appeal) is the letter an Affected Entity submits to the DDO to challenge an Agency Decision.

(d) *Dispute* is a disagreement by an Affected Entity with a specific Agency Decision regarding a pre-award or post-award action.

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

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

(2) The DDO for a Regional Assistance Agreement Appeal is the official designated by the Regional Administrator to issue the written decision resolving the Appeal. To help provide for a fair and impartial review, the AO for the challenged Agency Decision may not serve as the Regional DDO and the DDO cannot serve as the Review Official for the Appeal decision. Request for Review is the letter an Affected Entity submits to the designated Review Official to challenge the DDO's Appeal decision.

(f) *Review Official* is the EPA official responsible for issuing a decision resolving an Affected Entity's request for review of a DDO's Appeal decision.

(1) For a Headquarters DDO Appeal decision, the Review Official is the Director of the Office of Grants and Debarment or designee.

(2) For a Regional DDO Appeal decision, the Review Official is the Regional Administrator or designee.

§ 1500.14 Submission of Appeal.

An Affected Entity or its authorized representative may dispute an Agency

Environmental Protection Agency

§ 1500.16

Decision by electronically submitting an Appeal to the DDO identified in the Agency Decision. In order for the DDO to consider the Appeal, it must satisfy the following requirements:

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

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

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

(1) A copy of the disputed Agency Decision;

(2) A detailed statement of the specific legal and factual grounds for the Appeal, including copies of any supporting documents;

(3) The specific remedy or relief the Affected Entity seeks under the Appeal; and

(4) The name and contact information, including email address, of the Affected Entity's designated point of contact for the Appeal.

§ 1500.15 Notice of receipt of Appeal to Affected Entity.

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

(a) *Timely Appeals.* If the Appeal was timely submitted, the notice of acknowledgement may identify any additional information or documentation that is required for a thorough consideration of the Appeal. The notice should provide no more than 30 cal-

endar days for the Affected Entity to provide the requested information. If it is not feasible to identify such information or documentation in the notice the DDO may request it at a later point in time prior to Appeal resolution.

(b) *Untimely Appeals.* If the DDO did not receive the Appeal within the required 30-day period, or any extension of it, the DDO will notify the Affected Entity that the Appeal is being dismissed as untimely and the Agency Decision of the AO becomes final. The notification will also identify the Review Official. The dismissal of an untimely Appeal constitutes the final agency action, unless further review is sought in accordance with the requirements of §1500.16. In limited circumstances, the DDO may, as a matter of discretion, consider an untimely Appeal if doing so would be in the interests of fairness and equity.

§ 1500.16 Determination of Appeal.

(a) *Record on Appeal.* In determining the merits of the Appeal, the DDO will consider the record related to the Agency Decision, any documentation that the Affected Entity submits with its Appeal, any additional documentation submitted by the Affected Entity in response to the DDO's request under §1500.14(a), and any other information the DDO determines is relevant to the Appeal provided the DDO gives notice of that information to the Affected Entity. The Affected Entity may not on its own initiative submit any additional documents.

(b) *Appeal decision.* The DDO will issue the Appeal decision within 180 calendar days from the date the Appeal is received by the DDO unless a longer period is necessary based on the complexity of the legal, technical and factual issues presented. The DDO will notify the Affected Entity if the expected decision will not be issued within the 180 day period and if feasible will indicate when the decision is expected to be issued. The Appeal decision will also identify the Review Official. The DDO will issue the Appeal decision electronically. The DDO's decision will constitute the final agency action unless the Affected Entity files a timely request for review in accordance with

§ 1500.17

the Request for Review procedures in § 1500.17.

§ 1500.17 Request for review.

An Affected Entity may file an electronic written request for review of the DDO's Appeal decision to the appropriate Review Official within 15 calendar days from the date the Appeal decision is electronically sent to the Affected Entity. The request for review must comply with the following requirements:

(a) *Submission of request for review.* The request must be submitted to the Review Official identified in the Appeal decision as follows:

(1) If a Headquarters DDO issued the Appeal decision, the request must be electronically submitted to the Director of the Office of Grants and Debarment, or designee, at the email address identified in the Appeal decision, with a copy to the DDO.

(2) If the Appeal decision was issued by a DDO located in an agency Regional Office, the request for review must be electronically submitted to the Regional Administrator, or designee, at the email address identified in the Appeal decision, with a copy to the DDO.

(b) *Contents and grounds of request for review.* The request for review must include a copy of the DDO's Appeal decision and provide a detailed statement of the factual and legal grounds warranting reversal or modification of the Appeal decision. The only ground for review of a DDO's Appeal decision is that there was a clear and prejudicial error of law, fact or application of agency policy in deciding the Appeal.

(c) *Conducting the review.* In reviewing the Appeal decision, the Review Official will only consider the information that was part of the Appeal decision unless:

(1) The Affected Entity provides new information in the request for review that was not available to the DDO for the Appeal decision; and

(2) The Review Official determines that the new information is relevant and should be considered in the interests of fairness and equity.

2 CFR Ch. XV (1–1–15 Edition)

§ 1500.18 Notice of receipt of request for review.

Timeliness. The Review Official will provide the Affected Entity electronic written notice acknowledging receipt of the review request within 15 calendar days of receiving the request. The Review Official will further provide a copy of the notice to the DDO.

(a) If the request was submitted in accordance with § 1500.17, the notice of acknowledgment will also advise the Affected Entity that the Review Official expects to issue a decision within 45 calendar days from the date they received the request.

(b) If the request for review was not submitted within the required 15 calendar day period, or does not allege reviewable grounds consistent with § 1500.17, the Review Official will notify the Affected Entity that the request is denied as untimely and/or for failing to state a valid basis for review. In limited circumstances, the Review Official may, as a matter of discretion, consider an untimely review if doing so would be in the interest of fairness and equity.

§ 1500.19 Determination of request for review.

(a) Within 15 calendar days of receiving a copy of the notice acknowledging the receipt of a timely and reviewable Request for Review, the DDO will submit the Appeal record to the Review Official.

(b) The Review Official will issue a final written decision within 45 calendar days of the submission of the request for review unless a longer period is necessary based on the complexity of the legal, technical and factual issues presented.

(1) The Review Official will notify the Affected Entity if the expected decision will not be issued within the 45-day period and if feasible will indicate when the decision is expected to be issued.

(2) The Review Official's decision constitutes the final agency action and is not subject to further review within the agency.

PARTS 1501–1531 [RESERVED]