

(ii) Including an additional paragraph E.4, such as the following, to inform recipients how the award will change if program income is deducted: “If you report program income on the Federal Financial Report (SF-425), we will recalculate the Federal share of the budget and the non-Federal share if there is one. We also will modify the award to reflect the recalculated share or shares and the amount of program income you must spend on the project, which is the difference between the originally approved and recalculated budget amounts.”

(3) *Cost-sharing or matching alternative.* A DoD Component electing to specify the cost-sharing or matching alternative for use of program income must replace the wording appendix G to this part provides for Section E with the following wording: “You must use any program income that you earn during the period of performance under this award to meet any cost-sharing or matching requirement under this award. The program income must be used for the purposes and in accordance with the terms and conditions of the award.”

(4) *A combination of alternatives.* A DoD Component electing to specify some combination of addition, deduction, and cost-sharing or matching alternatives must use wording in Section E of FMS Article VII that specifies requirements for each alternative in the combination that is consistent with the requirements specified for that alternative in paragraphs (c)(1), (2), or (3) of this section.

§ 1128.725 Program income after the period of performance.

(a) *OMB guidance.* OMB guidance in 2 CFR 200.307(f) provides that an agency may specify in agency regulations, grant or cooperative agreement terms and conditions, or agreements negotiated with recipients during the close-out process that a recipient is accountable to the Federal Government for program income earned after the end of the period of performance.

(b) *DoD implementation.* A DoD Component should rarely, if ever, establish a requirement for a recipient to be accountable to the Federal Government

for program income earned after the end of the period of performance.

(c) *Award terms and conditions.* A DoD Component’s general terms and conditions must include as Section F of FMS Article VII the wording for that section that is provided in appendix G to this part. That wording specifies that recipients are not accountable to the Federal Government for program income earned after the end of the performance period. If an exception is warranted for an individual award, the exception is properly addressed at the time of award in the award-specific terms and conditions.

APPENDIX A TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE I, “FINANCIAL MANAGEMENT SYSTEM STANDARDS”

Unless any part of this appendix is reserved, as provided in § 1128.105, a DoD Component’s general terms and conditions must include the following wording for FMS Article I.

FMS ARTICLE I. FINANCIAL MANAGEMENT SYSTEM STANDARDS. (DECEMBER 2014)

Section A. System standard for States. As a State, you must expend and account for funds under this award in accordance with:

1. Applicable State laws; and
2. To the extent they comply with the requirements of Section B of this Article, your procedures for expending and accounting for your own State funds.

Section B. System standards for all recipients. Your financial management system must provide for:

1. Inclusion, in your accounts, of the following information about each DoD grant or cooperative agreement that you receive:
 - a. That you received the award from DoD;
 - b. The number and title listed in the Catalog of Federal Domestic Assistance for the DoD program under which the award was made;
 - c. The DoD award number; and
 - d. The year (your fiscal year) in which you received the award.
2. Accurate, current, and complete disclosure of the financial results of the award needed to comply with financial and programmatic reporting requirements that are specified in REP Articles I and II of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements. If you are asked at any time under this award to report financial information on an accrual basis, you:

a. Need not establish an accrual accounting system if you maintain your records on a different basis; and

b. May develop the accrual data based on an analysis of the data you have on hand.

3. Records that identify adequately the sources of funds for all activities funded by DoD awards, including any required cost sharing or matching, and the application of those funds. This includes funding authorizations; your obligations and expenditures of the funds; unobligated balances; property and other assets under the award; program income; and interest.

4. Effective control over, and accountability for, all funds, property, and other assets under this award. You must adequately safeguard all assets and ensure they are used solely for authorized purposes (see Section C of this article for additional requirements concerning internal controls).

5. Comparison of expenditures under this award for project or program purposes with amounts in the approved budget for those purposes.

6. The ability to relate financial data to performance accomplishments under this award if you are required to do so by the programmatic reporting requirements in REP Article I of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award concerning reporting requirements.

7. Written procedures:

a. To implement requirements specified in FMS Article II, “Payments;”

b. For determining the allowability of costs, which for this award are determined in accordance with FMS Article III, “Allowable costs, period of availability of funds, and fee or profit,” of these general terms and conditions, as supplemented by any award-specific terms and conditions of this award that relate to allowability of costs.

Section C. Internal controls. Your system of internal controls must conform to OMB guidance in 2 CFR 200.303. With respect to paragraph (e) of 2 CFR 200.303, your internal control system must include measures to safeguard any information that Federal statute, Executive order, or regulation requires to be protected (*e.g.*, personally identifiable or export controlled information), whether generated under the award or provided to you and identified as being subject to protection.

APPENDIX B TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE II, “PAYMENTS”

Unless a DoD Component adds, deletes, or modifies wording, as permitted by §§1128.210 through 1128.220, a DoD Component’s general terms and conditions must include the following wording for FMS Article II.

FMS ARTICLE II. PAYMENTS. (DECEMBER 2014)

Section A. Awards to States. If the award-specific terms and conditions of this award do not identify it as an award subject to Subpart A of 31 CFR part 205 (Department of the Treasury regulations implementing the Cash Management Improvement Act), then this award is subject to Subpart B of that part. Consistent with Subpart B of 31 CFR part 205:

1. *Payment method, timing, and amounts.* You must:

a. Minimize the time between your receipt of a payment under this award and your disbursement of those funds for program purposes.

b. Limit the amount of each advance payment request to the minimum amount you need to meet your actual, immediate cash requirements for carrying out the program or project.

c. Submit each advance payment request approximately 10 days before you anticipate disbursing the requested amount for program purposes, so that your receipt of the funds will be as close in time as is administratively feasible to your actual cash outlay for direct project costs and the proportionate share of any allowable indirect costs.

2. *Interest.* Unlike awards subject to Subpart A of 31 CFR part 205, neither you nor we will incur any interest liability due to a difference in timing between your receipt of payments under this award and your disbursement of those funds for project or program purposes.

Section B. Awards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

1. *Payment method.* Unless the award-specific terms and conditions of this award provide otherwise, you are authorized to request advance payments under this award. That authorization is contingent on your continuing to maintain, or demonstrating the willingness to maintain, written procedures that minimize the time elapsing between your receipt of each payment and your disbursement of the funds for program purposes. Note that you are not required to request advance payments and may instead, at your option, request reimbursements of funds after you disburse them for project or program purposes.

2. *Amounts requested.* You must:

a. Limit the amount of any advance payment request to the minimum amount needed to meet your actual, immediate cash requirements for carrying out the purpose of the approved program or project, including direct project costs and a proportionate share of any allowable indirect costs.

b. Exclude from any payment request amounts you are withholding from payments

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to contractors to assure satisfactory completion of the work. You may request those amounts when you make the payments to the contractors or to escrow accounts established to ensure satisfactory completion of the work.

c. Exclude from any payment request amounts from any of the following sources that are available to you for program purposes under this award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for program purposes before requesting additional funds from us.

3. *Timing of requests.* For any advance payment you request, you should submit the request approximately 10 days before you anticipate disbursing the requested amount for project or program purposes. With time for agency processing of the request, that should result in payment as close as is administratively feasible to your actual disbursements for project or program purposes.

4. *Frequency of requests.* You may request payments as often as you wish unless you have been granted a waiver from requirements to receive payments by electronic funds transfer (EFT). If you have been granted a waiver from EFT requirements, the award-specific terms and conditions of this award specify the frequency with which you may submit payment requests.

5. *Withholding of payments.* We will withhold payments for allowable costs under the award at any time during the period of performance only if one or more of the following applies:

a. We suspend either payments or the award, or disallow otherwise allowable costs, as a remedy under OAR Article III due to your material failure to comply with Federal statutes, regulations, or the terms and conditions of this award. If we suspend payments and not the award, we will release withheld payments upon your subsequent compliance. If we suspend the award, then amounts of payments are subject to adjustment in accordance with the terms and conditions of OAR Article III.

b. You are delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables," in which case we may, after reasonable notice, inform you that we will not make any further payments for costs you incurred after a specified date until you correct the conditions or liquidate the indebtedness to the Federal Government.

c. The award-specific terms and conditions of this award include additional requirements that provide for withholding of payments based on conditions identified during our pre-award risk evaluation, in which case you should have been notified about the nature of those conditions and the actions

needed to remove the additional requirements.

6. *Depository requirements.*

a. There are no eligibility requirements for depositories you use for funds you receive under this award.

b. You are not required to deposit funds you receive under this award in a depository account separate from accounts in which you deposit other funds. However, FMS Article I requires that you be able to account for the receipt, obligation, and expenditure of all funds under this award.

c. You must deposit any advance payments of funds you receive under this award in insured accounts whenever possible and, unless any of the following apply, you must deposit them in interest-bearing accounts:

i. You receive a total of less than \$120,000 per year under Federal grants and cooperative agreements.

ii. You would not expect the best reasonably available interest-bearing account to earn interest in excess of \$500 per year on your cash balances of advance payments under Federal grants and cooperative agreements.

iii. The best reasonably available interest-bearing account would require you to maintain an average or minimum balance higher than it would be feasible for you to do within your expected Federal and non-Federal cash balances.

iv. A foreign government or banking system precludes your use of interest-bearing accounts.

d. You may retain for administrative expenses up to \$500 per year of interest that you earn in the aggregate on advance payments you receive under this award and other Federal grants and cooperative agreements. You must remit annually the rest of the interest to the Department of Health and Human Services, Payment Management System, using the procedures set forth in OMB guidance in 2 CFR 200.305(b)(9).

Section C. Electronic funds transfer and other payment procedural instructions or information.

1. *Electronic funds transfer.* Unless the award-specific terms and conditions of this award provide otherwise, you will receive payments under this award by electronic funds transfer.

2. [Reserved]

APPENDIX C TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE III, "ALLOWABLE COSTS, PERIOD OF AVAILABILITY OF FUNDS, AND FEE OR PROFIT"

Unless a DoD Component reserves sections or paragraphs of this article, as permitted by §§1128.310 through 1128.325, a DoD Component's general terms and conditions must include the following wording for FMS Article III.